
Appendix 8

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NMFS received several thousands comments via letter, telephone calls, postcard, facsimile, and electronic mail. Many speakers offered comments at the 27 public hearings held throughout the Gulf of Mexico and the Atlantic coast. Comments, particularly those addressing significant legislative requirements or which resulted in changes to the proposed rule, are summarized here, together with NMFS' responses.

Tunas

Comment 1: NMFS should prohibit longline and net gear (including driftnets and purse seines) in the bluefin, yellowfin, and bigeye tuna fisheries.

Response: Driftnet gear is already prohibited in the bluefin tuna fishery and through this final action is prohibited in the fisheries for other Atlantic tunas (BAYS). Pair trawl gear is prohibited in all Atlantic tuna fisheries. Longline gear is restricted in the bluefin tuna fisheries with strict target catch requirements for incidental catch retention. Through this final action, fishermen who wish to enter the BAYS longline fishery are required to obtain limited access permits for both Atlantic swordfish and sharks. As such, access to the BAYS longline fishery would be limited. Pelagic longline gear is used to target swordfish and other fish species. Prohibiting the gear in the Atlantic tuna fisheries would result in increased tuna discards. NMFS maintains that there is no reason at this time to prohibit the use of purse seine gear in the Atlantic tuna fisheries. Bycatch concerns are minimal and access to the fishery is limited.

Comment 2: NMFS received numerous comments regarding bluefin tuna quota allocation, for and against limiting the Purse Seine quota to 250 mt ww. NMFS also received requests to reallocate some Purse Seine quota to other categories (commercial and recreational) to reflect historical participation and/or the increase in fishery participants (e.g., the Angling category). Comments in support of Purse Seine quota reduction include: the Purse Seine allocation is inconsistent with the Magnuson-Stevens Act (National Standard 4) in that the allocation is not fair and equitable, a few individuals receive an excessive share of the quota, and since Individual Vessel Quotas are transferrable, it is conceivable that a single owner could acquire rights to the entire Purse Seine Quota; NMFS should not incorporate the IVQ system by reference; and NMFS should implement a buyback program for the Purse Seine fishery. Comments in opposition to limiting the Purse Seine category to 250 mt ww include: the proposed cap was neither presented in the draft HMS FMP nor to the HMS AP for discussion, would be an arbitrary and capricious action, and would be contrary to the Magnuson-Stevens Act provision that NMFS "allocate both overfishing restrictions and recovery benefits fairly and equitably among sectors of the fishery;" the argument that the fishery does not contribute CPUE data is invalid; NMFS should not take this action without conducting a comparative analysis of allocations leading to "excessive quota shares;" and the AP, in discussing the issue of Purse Seine quota (as referenced in the proposed rule) was referring to relative quota shares rather than an absolute quota tonnage.

Response: The allocation to the Purse Seine category is fair and equitable. As described in Chapter 3, NMFS established "base" quotas for the various commercial and recreational categories in the bluefin tuna fishery in 1992 based upon the historical share of landings in each of these categories during the period 1983 through 1991. NMFS modified these quotas in 1995, reducing the Purse Seine category quota by 51 mt ww and transferring 4 mt ww from the Incidental category to the Angling category for the retention of large medium and giant bluefin tuna. The main reason for the reduction in the Purse Seine category quota was that the primary

purpose of the scientific monitoring quota was to provide data for stock assessments. The Purse Seine category does not provide a catch per unit effort time series used to estimate trends in stock size. Other reasons for reducing the Purse Seine quota in 1995 were issues raised by constituents of "fairness and equity", and the greater employment generated in the non-Purse Seine categories. In 1997, quota allocations were slightly modified from the 1995 base levels to more accurately reflect recent trends in fleet size, effort, and landings by category, and also to reflect the scientific monitoring nature of the west Atlantic quota. In 1998, allocations remained the same as in 1997, but were modified slightly after accounting for under- and over-harvests in certain categories.

NMFS maintains that the reasoning used in 1995 to reduce the Purse Seine quota still applies, and that the Purse Seine quota should be capped at its current allocation. The reasoning from 1995 included: 1) that the Purse Seine category does not provide CPUE data for the assessment of the stock; 2) issues of fairness and equity raised during the comment period; and 3) the greater employment and distribution of economic benefits generated from the non-Purse Seine categories. Unlike other bluefin tuna quota categories, the Purse Seine category is managed under limited access, with an Individual Vessel Quota (IVQ) system in place for bluefin tuna since 1982. For other open access permit categories (e.g., the General and Angling categories), as the number of participants increases, and the quota remains stable, the opportunity to harvest bluefin tuna decreases. The IVQ system essentially insulates the Purse Seine category from increased competition and participation and ensures stable harvest opportunities for the longterm. Limiting the Purse Seine category to the status quo level of 250 mt ww is consistent with the National Standards of the Magnuson-Stevens Act. NMFS maintains that to achieve optimum yield, the open access categories should also be provided with quota sufficient to allow sustained fishing opportunities for the longterm. Through this final action, NMFS limits the annual allocation to the Purse Seine category at 18.6 percent of the domestic landings quota or 250 mt ww, whichever is less. Because the AP has not had an opportunity to address this issue in light of the 1999 quota increase, NMFS is not making a final decision regarding the allocation of the 8 mt ww potential Purse Seine category quota increase for 1999 at this time; instead, NMFS will hold the 8 mt ww in the Reserve until after the AP has discussed the issue. If NMFS retains the 250 mt ww cap as proposed, no further modifications to the FMP will be made. If, however, NMFS does not retain the Purse Seine category quota cap, the FMP will be modified through the framework provisions, as specified in Chapter 3.

Currently, NMFS has no plan to implement a vessel buyback program in the Atlantic tunas Purse Seine fishery.

Comment 3: NMFS received numerous comments in support of a prohibition on the use of spotter aircraft by vessels (other than Purse Seine category vessels) participating in the bluefin tuna fishery, specifying that the prohibition would, among other reasons: lengthen the season via reduced catch rates, "level the playing field" for those fishermen who do not use planes, decrease bycatch and discard of undersized bluefin tuna, affirm the basis for the allowance of multiple landings for the Harpoon category (i.e., dependence on good weather), return the Harpoon category to its traditional fishing methods, and reduce the potential for accidents. NMFS received comment that the final rule should be issued before May 15, 1999, so that vessel owners can choose their appropriate permit category. NMFS also received several comments from opponents of a prohibition, including: NMFS should address the spotter plane issue independently of the FMP and should base its decision on the best available science; NMFS has failed to identify the important fishery-independent data (e.g., on bluefin tuna distribution, behavior, and environmental

biology) collected by spotter pilots and has implied in the FMP that CPUE-based indices are the only scientific data of any importance to bluefin tuna management; and arguments to prohibit the use of planes in the bluefin tuna fishery are baseless. Other comments NMFS received regarding the spotter plane issue include: NMFS should make a decision regarding an increase to the Harpoon quota independent of the decision on spotter planes; NMFS should implement a subquota for Harpoon vessels that are assisted by spotter planes; NMFS should implement a daily catch limit of one bluefin tuna per day for Harpoon vessels; and NMFS should hire spotter pilots to conduct scientifically valid, fishery-independent aerial surveys. NMFS also received comment that, since many General category permit holders may obtain a Harpoon category permit if NMFS implements a spotter plane prohibition (for vessels other than in the Purse Seine category), NMFS should increase the Harpoon category quota.

Response: NMFS did not select a preferred alternative regarding this issue in the HMS FMP and indicated that a separate rulemaking would be undertaken pending further deliberation and analyses. NMFS agrees that analysis of the effects of spotter aircraft on vessels participating in the bluefin tuna fishery must be based on the best available science. NMFS intends to complete a final rule on this issue prior to the commencement of the General and Harpoon category fishing seasons, June 1, 1999, and understands that it is preferable to announce the decision prior to the deadline for permit category changes.

Comment 4: NMFS should not require that Atlantic tunas other than bluefin tuna be landed with the tail attached; this regulation is unnecessary and restrictive. The current dressing procedures, which leave pectoral fin and the dorsal fins attached, provide the necessary physical features for accurate species identification. Keeping tail fins intact creates processing and storage problems for tunas that will reduce quantity and price.

Response: NMFS recognizes the impact of the required landing form on commercial fishermen, especially longliners. NMFS requires the landing of Atlantic tunas with the tail and one pectoral fin attached to facilitate enforcement of minimum size. However, NMFS is currently analyzing yellowfin and bigeye tuna measurement data to develop a formula to convert measurements (e.g., pectoral fin to fork measurement or pectoral fin to keel measurement) for yellowfin and bigeye tuna landed with the head removed. NMFS may consider allowing yellowfin and bigeye tuna to be landed with head and tail removed when an appropriate conversion formula is developed.

Comment 5: NMFS received numerous comments regarding restricted-fishing days (RFDs), some of which support the status quo, some of which oppose RFDs altogether, and some suggesting alternate schedules, including: in order to extend the General category season, NMFS should implement more RFDs than proposed, e.g., 3 days or more per week (Sundays, Wednesdays, and Fridays or Sundays, Mondays, and Wednesdays) in addition to the days that correspond to Japanese market closures, and should begin the schedule of RFDs for 1999 in early July.

Response: NMFS has considered these comments and agrees additional General category RFDs may increase the likelihood that fishing would continue throughout the summer and fall, and would further distribute fishing opportunities without increasing bluefin tuna mortality. NMFS will announce annually the General category effort control schedule (time period subquotas and RFDs) through a final specifications notice. NMFS intends to announce the 1999 RFD schedule and address comments regarding effort controls in the final specifications, to be

published concurrent with the final rule to implement this FMP. See Appendix 3 for the 1999 effort control schedule and a discussion of the effort control alternatives.

Comment 6: NMFS received some comments in support of the status quo General category time-period subquotas (three periods), and some suggesting alternate schedules, including: NMFS should implement two General category time-period subquotas (e.g., for June-August and September-December) since prices are higher in August than September and to avoid derby conditions in October.

Response: NMFS will address comments regarding effort controls in the 1999 final specifications notice, to be published concurrent with the final rule to implement this FMP. See Appendix 3 for the 1999 effort control schedule and a discussion of the effort control alternatives.

Comment 7: NMFS received several comments requesting more certainty regarding the Angling category season, retention limits, and quota allocation, including: NMFS should implement a separate daily retention limit for Coast Guard inspected vessels; NMFS should separate recreational quotas for Charter and private vessels; NMFS should implement more and/or different regional subquotas; NMFS should implement date-certain seasons; NMFS should balance the entire Angling category quota over three years; and NMFS should shift the north/south dividing line for the Angling category. Further comment included: NMFS should establish a set season with daily retention limits and minimum sizes by area and make adjustments for overharvests and underharvests annually vs. inseason. With this approach, the recreational industry and anglers can make plans for the fishing season that will not get disrupted by uncertain changes (i.e., closures and adjustments to the daily retention limit). An improved data collection program would be an important part of this and could be pursued with industry support to provide accurate catch and effort data for quota/stock monitoring purposes and to determine the subarea quota/seasons for the following year. The annual assessment of the catch and adjustment of the subarea quotas should make it easier to look at and implement a better location of the north/south line and the possibility of a third area in the vicinity of Montauk, New York and north.

Response: In the draft HMS FMP, NMFS described the challenges in managing and monitoring the recreational fishery for bluefin tuna, with its highly variable catch rates and locations, and the ICCAT restrictions on the catch of school size bluefin tuna. In order to monitor recreational landings of bluefin tuna, NMFS requires cooperation from the recreational community in using the Automated Catch Reporting System and participation in the Large Pelagic Survey. NMFS has the authority and flexibility to open and close the Angling category in sub-areas in order to ensure equitable fishing opportunities. The recent ICCAT recommendation which allows four years for countries to balance their landings of school size bluefin tuna also should allow the U.S. more flexibility in managing this fishery, and NMFS is committed to working with the Advisory Panel, the States, and recreational fishermen in order to better manage the Angling category fishery.

Comment 8: NMFS should postpone action on the bycatch measures until it has at least a full year's data from all fishing sectors, in order to proceed in a fair, equitable, and effective manner.

Response: NMFS has based the bycatch measures on the best available information. Further, National Standard 9 of the Magnuson-Stevens Act requires NMFS to minimize bycatch

to the extent practicable.

Comment 9: NMFS should permit spearguns as an allowable gear type in the Atlantic tunas Angling category fishery.

Response: The fishery for Atlantic tunas is subject to intense competition among the various user groups; the addition of spearguns as an allowable gear type could cause additional conflict among the user groups, and may pose other problems including safety and discard concerns. Therefore, NMFS is not adding spearguns as an allowable gear type at this time.

Comment 10: NMFS received numerous comments for and against the proposed recreational daily retention limit of 3 yellowfin tuna per angler. Those in support of the retention limit include: NMFS has ignored the expansion of the recreational yellowfin tuna (and bigeye tuna) effort despite the U.S. commitment to ICCAT to limit effective yellowfin effort to the reported 1992 level, so NMFS should implement recreational restrictions now; a daily retention limit of 3 yellowfin tuna per angler is excessive; NMFS should implement a yellowfin tuna daily retention limit since yellowfin tuna seem to be of less weight than in previous years. Comments in opposition of the retention limit include: As yellowfin tuna are not currently considered overfished, there is no basis for a yellowfin tuna daily retention limit; a limit now may lead to at further reduction of the retention limit in subsequent years, as has happened in the bluefin tuna fishery; NMFS has proposed no commercial limits, so the recreational limit is inequitable; setting a recreational daily retention limit may disadvantage the United States in ICCAT negotiations (if a yellowfin tuna quota is recommended in the future) if it results in decreased U.S. landings; a retention limit would have a negligible impact on fishing mortality since on most trips, each angler lands 3 or fewer yellowfin tuna, and in many areas, captains voluntarily limit each angler to 3 or fewer yellowfin tuna; there is no domestic benefit for the regulation since U.S. landings comprise only approximately 4 percent of the Atlantic landings; and until NMFS has scientific data that show that the implementation of daily retention limits is warranted, NMFS should not take any action that affects only the recreational sector.

Response: NMFS acknowledges the importance of yellowfin tuna to the recreational fishing industry. NMFS chooses to take the precautionary approach since the latest SCRS report indicates that the current fishing mortality rate for yellowfin tuna is probably higher than that which would support maximum sustainable yield on a continuing basis. Further, effort restrictions are consistent with the ICCAT recommendation to limit effective fishing effort for yellowfin tuna to 1992 levels. NMFS has already implemented, or is implementing through the HMS FMP, several restrictions in the commercial yellowfin tuna, including limited access in the Purse Seine and Longline BAYS fishery, and the prohibition on pair trawl gear and driftnets in the Atlantic tunas fishery. NMFS maintains that limiting access to the recreational yellowfin tuna fishery is not desirable at this time and that the retention limit is an alternate management measure that is consistent with the ICCAT recommendation. This retention limit for yellowfin tuna is designed to prevent excessive landings in the recreational fishery and maximize fishing opportunities. By taking initiatives for conservation measures, the United States will have a stronger bargaining position for future negotiations.

Comment 11: NMFS should allow dealers more than 5 days after the completion of each bi-weekly reporting period to submit bluefin tuna bi-weekly reports. Price information is not available for bluefin tuna shipped to Japan until 4 days after landing, and allowing dealers only one

day to submit the information is unreasonable.

Response: NMFS agrees, and understands that the proposed reporting requirement may be difficult for dealers to comply with considering the market for bluefin tuna. NMFS proposed to modify the regulations on bluefin tuna bi-weekly reports to make them consistent with the biweekly reporting schedule for sharks and swordfish. Therefore, NMFS is not modifying the current 10-day reporting period for bluefin tuna bi-weekly reports.

Comment 12: NMFS should not hold 20 mt ww of the Angling category school bluefin tuna subquota in reserve, given that NMFS may now balance overharvest and underharvests over a four-year period.

Response: Because of high, and highly variable catch rates, the Angling category can easily harvest and exceed its school bluefin tuna subquota. NMFS maintains that the school bluefin tuna reserve is prudent in that it will assist in U.S. compliance with the ICCAT-recommended limit on the retention of school bluefin tuna. NMFS may allocate tonnage from the school bluefin tuna reserve during the season, as appropriate.

Comment 13: The provision to add or deduct bluefin tuna underharvest or overharvest, as applicable, should be discretionary only for school bluefin tuna, which can be balanced over a four-year period. For all other size classes, the provision should be mandatory.

Response: NMFS agrees and has clarified the regulations accordingly. In the case of bluefin tuna overharvest or underharvest, NMFS must subtract the overharvest from, or add the underharvest to, the appropriate quota category, or subcategory, with the exception of the Angling category school bluefin tuna subcategory, for the following fishing year, provided that the total of the adjusted quotas and the Reserve is consistent with the ICCAT Rebuilding Program. In the following year, NMFS also may allocate any remaining quota from the Reserve to cover this overharvest, consistent with the established criteria.

For the Angling category school bluefin tuna subcategory, because of the ICCAT-recommended four-year balancing period, NMFS may subtract the overharvest from, or add the underharvest to, the school bluefin tuna subquota for the following fishing year. NMFS must, prior to the end of the four-year balancing period, make adjustments to account for overharvest of school bluefin, if necessary to comply with the ICCAT Rebuilding Program.

Quota monitoring in the bluefin tuna fishery is difficult and overharvests are likely, thus accounting for overharvests will not be "punitive", in that one category or subcategory's landings quota overharvest will not be redistributed to other categories. While some comments submitted to NMFS have suggested that categories should be "rewarded" or "punished" for their under/overharvests as described above, NMFS maintains it is not the intent of ICCAT or a domestic management objective to redistribute quota from one category to another due to overharvest. The ICCAT provision regarding overharvest and underharvest is designed to address consistent mortality, not just compliance.

Comment 14: The Angling category fishery should be catch and release only.

Response: NMFS considered the elimination of the small fish quota for bluefin tuna, but rejected this alternative because the elimination of the school, large school, and small medium bluefin tuna fishery would have adverse social and economic impacts on the recreational and charter/headboat sectors, and would reduce NMFS' ability to collect the best available data on the catches of the broadest range of age classes possible for stock assessment purposes.

Comment 15: Commercial yellowfin tuna landings should be reduced by at least 50 percent.

Response: As indicated in the response to Comment 11, NMFS has taken numerous measures to restrict the commercial yellowfin tuna fisheries. Therefore, NMFS maintains that no further action regarding the commercial yellowfin tuna fisheries is necessary at this time. NMFS will continue to monitor the status of the yellowfin tuna fisheries as SCRS has indicated that the yellowfin tuna stock is fully-exploited.

Comment 16: NMFS should continue to allow the traditional harvest of skipjack, bonito, and bait fish with driftnet gear. This gear has been used off the coast of New Jersey for 11 years. This is a clean fishery with no bycatch of marine mammals or endangered species. The draft HMS FMP shows that skipjack and bonito stocks are underutilized and shows the U.S. catch to be at low levels. The fisheries for skipjack and bonito are mixed; a directed fishery for bonito cannot be pursued without skipjack as bycatch.

Response: Because the Magnuson-Stevens Act does not include bonito in its definition of HMS, NMFS is not implementing bonito conservation and management measures in this FMP. NMFS recognizes that the prohibition on driftnets for Atlantic tunas would preclude a small coastal driftnet fishery from retaining its catch of skipjack. NMFS intends to issue Experimental Fishing Permits (EFPs) to the limited number of coastal driftnetters affected by the gear prohibition in order to collect more information on this fishery and help determine NMFS' future course of action. Individuals who wish to use driftnet gear when targeting species other than Atlantic tunas may apply to NMFS for an Experimental Fishing Permit to land incidentally caught Atlantic tunas (other than bluefin).

Comment 17: NMFS should allow individuals renting vessels to obtain an Atlantic tunas permit (e.g., for tourists in the U.S. Virgin Islands and Puerto Rico).

Response: Any vessel with state registration or U.S. Coast Guard documentation may obtain an Atlantic tunas permit. Individuals chartering or renting a vessel for which NMFS has issued an Atlantic tunas permit are therefore eligible to fish for Atlantic tunas.

Comment 18: The existing and proposed bluefin tuna regulations violate the Magnuson-Stevens Act, specifically National Standard 1. The HMS FMP should include a valid designation of Maximum sustainable yield, Optimum yield, and EFH, using the precautionary approach, as well as objective and measurable criteria for defining overfishing and the measures for ending overfishing and rebuilding the fishery. Adoption of the ICCAT recovery plan also violates National Standard 2, which requires the use of the best scientific information available, and was done without public input. NMFS must explain why it is using untested models to set Maximum sustainable yield. Additional measures that should be included in the HMS FMP include increased observer coverage, minimization of bycatch in spawning areas such as the Gulf of Mexico, and minimization of bycatch by regulating longline fishing gear.

The HMS FMP and proposed regulations also violate the United Nations Agreement on Straddling Stocks, which requires the application of the precautionary approach in the management of fish such as bluefin tuna.

Response: The ICCAT rebuilding program meets the standards of the Magnuson-Stevens Act in that it includes an appropriate time period, targets, limits, and explicit interim milestones for recovery; NMFS indicated in the draft FMP that adoption of the ICCAT rebuilding program would be the preferred alternative if these standards were met. The ICCAT rebuilding program is

based on the SCRS stock assessment, which is the best scientific information available. It is consistent with both the Magnuson-Stevens Act and the Atlantic Tunas Convention Act in that it implements a quota equal to the ICCAT-recommended allocation for the United States, and maintains traditional fishing patterns of U.S. vessels. The bluefin tuna rebuilding program is precautionary in that it provides the flexibility to modify the Total Allowable Catch, the Maximum sustainable yield target, and/or the rebuilding period based on subsequent scientific advice.

Finally note that NMFS is implementing a time/area closure to reduce pelagic longline dead discards.

Comment 19: In the draft FMP, NMFS has used definitions and methodologies that ascribe higher values to the recreational fishery, or the “existence value” of HMS species than those “net economic benefits” of the commercial fishery. NMFS appears to interpret National Standard 8 as less equal than National Standard 1.

Response: NMFS disagrees; NMFS is not ascribing higher values to the recreational fishery, or the “existence value” of HMS species. To prepare this FMP in accordance with the Magnuson-Stevens Act, NMFS has addressed the National Standards for both the commercial and recreational sectors using the best available information. In addition, the NSGs state that deliberation about communities must not compromise the achievement of conservation requirements.

Comment 20: Regarding public hearings, NMFS should ensure that individuals be provided an environment in which they can express their comments for the record. At a few of the HMS FMP public hearings, some individuals felt physically or otherwise threatened by other attendees while or after making their comments and have expressed that they will not give comments at public hearings until NMFS addresses this issue.

Response: NMFS is very concerned about comment that concern for personal safety is hindering the public process. NMFS agrees that all attendees at public hearings should be able to articulate their comments in a safe environment. Public hearings are an essential part of the administrative process of rule development. NMFS acquires good information from the comments presented at public hearings and expects members of the public to conduct themselves appropriately for the duration of the meeting. At the beginning of each public hearing, a NMFS hearing officer explains the meeting ground rules (e.g., that attendees will be called to give their comments in the order in which they signed-in and will have an equal amount of time to speak, and that attendees should not interrupt one another). The hearing officer attempts to structure the meeting so that all attending members of the public are able to comment, if they so choose, regardless of the controversiality of the subject(s). Attendees are expected to respect the ground rules, and if they do not, they will be asked to leave the hearing. In addition, when announcing public hearings or scoping meetings, NMFS will include in the notice a reminder of the ground rules for these meetings.

Comment 21: In the FMP, the objectives for bluefin tuna management, especially those regarding the preservation of traditional fisheries and historical fishing patterns, should be listed separately, as should the objectives for the other HMS fisheries, and the seven objectives (three listed in the 1995 bluefin tuna Final Environmental Impact Statement and four in a 1992 bluefin tuna final rule) should be included. This will be especially important for future ICCAT negotiations as other nations may seek a portion of the west Atlantic Total Allowable Catch.

Response: In preparing one FMP for the management of Atlantic tunas, swordfish, and sharks, NMFS has chosen to list the management objectives together. However, NMFS has added language to the objectives to include preserving traditional fisheries as well as historical fishing patterns and participation.

Comment 22: NMFS should allocate the fair share of the 1998 ICCAT-recommended U.S. quota increase to the Incidental category, the Harpoon category, and the Purse Seine category, and should ensure that any future quota increases be distributed fairly and according to each user group's historical share of the fishery. NMFS does not need to maintain such a large reserve, given the improvements in commercial quota monitoring, the new 4-year balancing period for school bluefin tuna, and the proposed school bluefin tuna reserve. NMFS should allocate 17 mt ww from the Reserve to the Harpoon category quota, to reflect the Harpoon category's traditional participation in the fishery.

Response: The FMP implements percentage share allocations for bluefin tuna, and all categories other than the Purse Seine category will share in the impacts of both quota increases and reductions (see response to comment 2). Bluefin tuna allocation issues were discussed extensively at several HMS AP meetings in 1998, and there was general support for maintaining the 1997/1998 quota allocations (which are based upon the historical share of landings in each of these categories during the period 1983 through 1991, modified in 1995 and 1997). While NMFS agrees that improved commercial bluefin tuna monitoring, along with the 1998 ICCAT recommendation and the measures adopted in this FMP, allow for more flexible management of the fishery, NMFS maintains that the Reserve is necessary to ensure that the United States does not exceed its ICCAT-recommended quota, and to utilize it for inseason or postseason transfers as necessary and appropriate.

Comment 23: In order to avoid potential bycatch mortality, NMFS should not implement a daily retention limit for the Incidental other subcategory (e.g., for traps), but rather should allow landings until the quota is filled.

Response: The FMP eliminates the Incidental permit category for Atlantic tunas, and creates two new categories: "Longline" to reflect the existing authorization of directed longline fisheries for tunas other than bluefin tuna, and "Trap" to account for unavoidable catch of bluefin tuna by pound nets, traps, and weirs. To address enforcement issues concerning unauthorized landings of bluefin tuna under the Incidental category quota, fixed gear other than "traps" and purse seines for non-tuna fisheries will no longer be allowed to land bluefin tuna. Because of the limited "Trap" quota, and the infrequent catch of bluefin tuna by pound nets, traps, and weirs, NMFS maintains that the proposed one fish per year retention limit is sufficient, and will not result in additional bycatch.

Comment 24: The comment period for the Bluefin Tuna Addendum was not long enough.

Response: NMFS filed the supplemental proposed rule regarding bluefin tuna issues on February 22, 1999, and express-mailed copies of the Bluefin Tuna Addendum to AP members and other consulting parties to maximize time to review the document before the deadline for comments. In response to public requests that additional time was needed to review the Addendum, NMFS subsequently extended the comment period deadline (except for proposed swordfish import restrictions) to March 12, 1999, to allow a full two weeks of additional comments, and added a public hearing at the end of the scheduled 26 hearings.

Swordfish: Rebuilding

Comment 1: NMFS received many comments in support of swordfish rebuilding programs with various timetables, including the adoption of an ICCAT-recommended rebuilding program and rebuilding programs shorter than 10 years.

Response: NMFS must implement the ICCAT-recommended quota once it is accepted by the United States, and has supported the development of a rebuilding program for swordfish by ICCAT scientists. NMFS believes a 10-year rebuilding program for North Atlantic swordfish is appropriate. NMFS considered a shorter rebuilding program but seeks to balance a reduction in short-term impacts on small businesses and recovery of the stock.

Comment 2: NMFS should ban swordfish fishing for five years.

Response: The United States cannot reduce the swordfish quota to 0 for 5 years; the United States is required by the ATCA to adopt ICCAT quotas once the United States accepts the ICCAT recommendation. NMFS is establishing a foundation for working through the ICCAT process to develop an international rebuilding program for Atlantic swordfish once measures are accepted by the United States. Unilateral action will not rebuild swordfish. Banning U.S. swordfish fishing will not rebuild the stock; international action is necessary.

Comment 3: NMFS should have a clear statement of objectives and measures for the international rebuilding of swordfish, contrary to what happened at ICCAT in 1998 with bluefin tuna. Those objectives should include a 10-year rebuilding program with associated quota reductions, closed spawning areas to reduce bycatch of juvenile swordfish, and a reduction in fishing capacity.

Response: The ICCAT Advisory Committee (IAC) works with the U.S. commissioners to ICCAT and NMFS to develop a negotiating strategy at ICCAT. The HMS FMP serves as a foundation for developing a rebuilding program that is consistent with the Magnuson-Stevens Act. The IAC and commissioners will seek comment on the U.S. position at ICCAT at five regional meetings in the Fall of 1999 as well as at the IAC meeting scheduled for October 1999.

Comment 4: NMFS received many comments on the minimum size for swordfish that ranged from maintaining the status quo to adopting a schedule of small annual increases in the swordfish minimum size limit above the current minimum size limit of 33 lb dw. Other comments: include the minimum size in the framework; consider more creative options for minimum sizes such as changing tolerance levels so the swordfish are not wasted; and consider options that would be acceptable in the international context to reduce size compliance issues that are undercutting rebuilding schedules.

Response: Reducing mortality of small swordfish is important to the recovery of the stock. Increasing the minimum size in increments over time, however, makes it difficult to assess changes in stock size and structure due to the way size-specific abundance data are collected. Increasing the minimum size might increase longline discards given the fact that swordfish do not segregate by size class throughout the Atlantic. NMFS prefers to maintain the minimum size and implement time/area closures, gear modifications, and other measures to reduce bycatch of undersized swordfish and increase survival of released fish. NMFS has included the swordfish minimum size in the FMP framework and is currently addressing time/area closures.

Comment 5: NMFS should include an allowance for having swordfish fillets/steaks on board for personal consumption, similar to the groundfish fishery management plan.

Response: NMFS cannot implement this measure at this time because it was not contained in the proposed rule (or draft FMP). However, NMFS has studied similar existing regulations in other fisheries and may raise the issue at a future meeting of the HMS Advisory Panel.

Comment 6: NMFS should reinstate the commercial retention limit for swordfish to help maintain higher prices and make sure quotas are not exceeded.

Response: NMFS established the commercial retention limit in order to slow catch rates. Since that time, many large capacity vessels have left the Atlantic pelagic longline fishery. If a need arises in the future, NMFS will consider commercial retention limits, as well as other alternatives, for addressing these problems.

Comment 7: NMFS should not exempt vessels with a VMS unit from the swordfish retention limits in the North Atlantic Ocean during a closure of that directed fishery. Vessels could make one set south of the line, come north, and then continue to make sets north of the line and NMFS would not know where the swordfish were caught.

Response: VMS is required by all pelagic longline vessels, and regulations have been altered to accommodate this measure, therefore, there is no “exemption.” NMFS agrees that VMS does not indicate how many swordfish are caught in a set. However, VMS would reveal if a longline set was made in the (closed) North Atlantic, should such a violation occur. It is not necessary to know the number of fish caught in a closed area to impose civil penalties.

Swordfish: Recreational Fishery

Comment 1: NMFS received many comments on the issue of accounting for recreational fishing mortality, including suggestions for future monitoring programs. These suggestions included maintaining the status quo, establishing a new recreational directed fishery quota, or supporting the proposed measure of subtracting recreational landings from the incidental catch quota.

Response: NMFS needs time to assemble the historical data that exist and therefore cannot set a reasonable recreational directed fishery quota at this time. However, NMFS recognizes that effort in this sector is growing as swordfish encounters appear to be increasing in some areas and therefore swordfish recreational landings need to be subtracted from the U.S. swordfish quota. NMFS will subtract recreational swordfish landings from the incidental catch quota and may establish a directed fishery quota and monitoring program, when and if appropriate.

Comment 2: NMFS should establish a recreational swordfish retention limit of 1 swordfish per person per day.

Response: NMFS disagrees. Recreational directed fishing mortality is not at a level that needs to be restricted. Retention limits may be established in the future through the framework process.

Comment 3: The proposed regulations imply that if the recreational catch is subtracted from the Incidental catch quota and that quota category closes because the quota is met, then there will be a closure of the recreational fishery.

Response: NMFS' intent is to account for all sources of mortality, including the recreational catch of swordfish. Therefore, if the incidental catch quota category is closed, all fishermen who catch swordfish incidentally, including all recreational fishermen, must release them. As noted in the Comment 1 in this section, NMFS may consider a subquota for the recreational swordfish fishery in the future.

Swordfish: Counting Dead Discards Against the Quota

Comment 1: NMFS received many comments on the issue of accounting for all sources of mortality on the swordfish stock. These comments supported either unilateral or multilateral (or both) measures to count dead discards against overall quotas.

Response: NMFS agrees that accounting for all sources of mortality will enhance rebuilding and this FMP establishes the foundation to count dead discards against the swordfish quota. NMFS cannot count dead discards against the ICCAT quota unless recommended by ICCAT.

Comment 2: If NMFS counts dead discards of swordfish against the quota, then NMFS should eliminate the minimum size and allow fishermen to land and utilize all hooked swordfish.

Response: NMFS implemented the alternative ICCAT minimum size of 33 lb dw in 1996 and has implemented a ban on sale of swordfish less than that size in the United States. Counting dead discards against the U.S. quota may serve as an incentive for fishermen to avoid areas of small swordfish concentration. By coupling a minimum size measure with a time/area closure, NMFS' intent is to reduce U.S. mortality of undersized swordfish.

Comment 3: Allocation of quotas should be gear-specific and discards should be counted against these specific gear allocations.

Response: NMFS authorized longline, harpoon, and other handgear fishermen to fish for Atlantic swordfish in a directed commercial fishery. NMFS does not intend to further sub-divide the directed quota at this time due to low swordfish landings by handgear fishermen. Dead discards would be counted against the entire category.

Comment 4: NMFS counted dead discards against the quota in the past and it did not make a difference to the stock.

Response: NMFS has always monitored and reported dead discards to ICCAT, and this mortality was taken into account in assessing total mortality of Bluefin tuna and swordfish. NMFS wants to account for all sources of mortality, and to create every incentive for vessel operators to minimize bycatch and bycatch mortality of HMS. Rebuilding swordfish and bluefin tuna stocks requires more than just accounting for dead discards, it requires a decrease in fishing mortality rate to rebuild overfished stocks. In the past, the fishing mortality rate was too high and has resulted in overfishing, regardless of whether dead discards were included in the quota.

Swordfish: Size Limits

Comment 1: NMFS should consider eliminating the minimum size limit for swordfish because other countries keep all their swordfish.

Response: A minimum size is effective only if it results in a decrease in catch of small swordfish because fishermen are able to modify their behavior or if the survival of released fish is

sufficiently high to offset the fishing mortality that may result. Fishermen have been able to reduce small swordfish bycatch to a certain extent but that additional measures may now be necessary to enhance the effectiveness of the minimum size (e.g., time/area closures.) NMFS recognizes the need for further progress in reducing small swordfish mortality, and will use all available information to consider other measures to do so (e.g., time/area closures, gear modifications, etc.) The inclusion of time/area closures where and when small fish tend to predominate could further effect a decrease in fishing mortality rate of small swordfish.

Comment 2: The United States has failed to comply with ICCAT recommendations to protect juvenile swordfish.

Response: NMFS has adopted the alternative minimum size for swordfish, has prohibited the sale of undersized swordfish, and keeps appropriate records of swordfish discards. All of these measures are consistent with ICCAT recommendations to protect small swordfish.

Sharks: General

Comment 1: The original FMP is working and NMFS should give the regulations a chance to be reflected in the science before making more changes.

Response: NMFS disagrees. The final HMS FMP measures for Atlantic sharks are in large part based on 1998 Shark Evaluation Workshop results that indicate that additional reductions in effective fishing mortality are necessary to rebuild large coastal sharks. The HMS FMP also implements several precautionary measures for pelagic and small coastal sharks in order to prevent these species from being overfished.

Comment 2: NMFS should make sure states implement similar size restrictions for sandbar sharks and effective large coastal shark and small coastal shark management will require coordination with regional councils and states.

Response: NMFS has asked states to implement regulations consistent with Federal regulations and several states have implemented or are in the process of implementing consistent or more stringent shark regulations. NMFS intends to continue to work with the Atlantic and Gulf coastal states, the regional fishery management councils, and the regional commissions to coordinate consistent regulations for sharks in state and Federal waters.

Comment 3: NMFS developed management options without international consensus and has failed to pursue comparable shark conservation throughout the range of these species. NMFS should justify implementing unilateral actions when international actions are necessary to rebuild shark stocks.

Response: Domestic action is warranted due to the fact that several important nursery areas are located within U.S. waters and that proactive domestic management is a critical element for successful international shark management. NMFS disagrees that it has failed to pursue comparable shark conservation internationally. The United States was a leading participant in the recent Food and Agriculture Organization Consultation on Shark Conservation and Management, which resulted in the adoption of the Global Plan of Action for Sharks. ICCAT is pursuing additional data collection and analyses on sharks through its current authority. NMFS is also pursuing regional management through cooperative discussions with Canada and Mexico.

Comment 4: NMFS must increase observer coverage and port sampling (perhaps to 50 percent of fishing effort) to determine the effectiveness of the measures in the FMP, particularly the effectiveness of minimum sizes to reduce fishing mortality on juvenile sandbar and dusky sharks, and to determine bycatch and bycatch mortality of prohibited species and undersized fish. NMFS should conduct length frequency monitoring on an annual basis.

Response: NMFS agrees that observer coverage, port sampling, and length frequency monitoring can be important tools in evaluating the effectiveness of the final actions, including the prohibition on possession of dusky sharks, and one of NMFS' goals is to ensure that monitoring and observer coverage meet scientific assessment needs. NMFS intends to take practicable steps to increase observer coverage.

Comment 5: NMFS should consider regional differences in its management.

Response: NMFS agrees and has attempted to do so in the development of this FMP. NMFS believes that the establishment of ridgeback and non-ridgeback large coastal sharks subgroups and the new procedures to adjust for quota over/underharvest address these concerns.

Comment 6: NMFS received several comments regarding minimum sizes for sharks, ranging from a minimum size of 4 feet and 4.5 feet for all sharks, 60 inches for all sharks, 36 inches for all small sharks, 72 inches for large sharks, 6 feet for mako and thresher sharks, 7 feet for large coastal sharks, and 8 feet for blue sharks, and support for using slot limits for sharks.

Response: NMFS agrees with use of minimum sizes as a tool to reduce effective fishing mortality on sharks. For this tool to be successful, it must be relatively simple, comprehensive, and enforceable. NMFS has selected the most efficient minimum size limit for accomplishing the FMP objectives within these constraints. NMFS may consider additional management measures, including increasing minimum sizes and slot limits, in the future.

Comment 7: NMFS should do population assessments in 1999 for pelagic sharks and in 2000 for small coastal sharks.

Response: NMFS agrees that the stock status of pelagic and small coastal sharks should be assessed at the soonest practicable time. The ICCAT SCRS bycatch subcommittee will be analyzing pelagic shark catch rates in May, 1999, and the United States will participate in that meeting. Additional stock assessments will be conducted as practicable.

Comment 8: NMFS should establish all catch and release or tag and release fishing for sharks.

Response: NMFS disagrees. NMFS believes that limited harvest of some sharks subject to a minimum size in the recreational fishery meets the conservation goals to rebuild overfished species and prevent overfishing while minimizing social and economic impacts that an all tag and release fishing requirement would impose.

Comment 9: NMFS should rebuild coastal sharks within 30 years.

Response: NMFS agrees that the 30 year rebuilding program for the non-ridgeback large coastal shark species outlined in the HMS FMP is appropriate. However, for the ridgeback large coastal shark species, NMFS believes that a 39-year rebuilding program is appropriate because of the sandbar shark (the primary ridgeback large coastal shark) life history.

Comment 10: Analyses of total mortality may be in error if “catch” vs. “harvest” data are used, especially for sharks.

Response: NMFS agrees and the sections in the final HMS FMP that describe recreational fisheries, particularly for shark recreational fishing mortality, have been clarified and uniformly refer to recreational landings or harvest, not catches, consistent with MRFSS terminology.

Comment 11: NMFS should dissolve the Operations Team because the HMS AP fulfills the OT’s role.

Response: NMFS agrees.

Comment 12: NMFS should initiate species identification training for sharks.

Response: NMFS agrees and intends to increase public education and outreach including workshops and the production of an identification guide for all HMS.

Sharks: Fishing Gear

Comment 1: NMFS should prohibit commercial fishing gears; NMFS should prohibit longline gear.

Response: NMFS disagrees. The final actions in the HMS FMP are expected to meet the conservation goals to rebuild large coastal sharks and prevent overfishing of pelagic and small coastal sharks while allowing limited commercial harvest of sharks to continue.

Comment 2: NMFS should ban shark drift gillnets because of too much bycatch of finfish and protected species in that fishery, and because the Large Whale Take Reduction Plan regulations do not address sea turtle and finfish bycatch issues.

Response: NMFS is gathering information on the effect of drift gillnets in Atlantic shark fisheries on protected species, juvenile sharks, and other finfish. However, because of limited data at this time regarding bycatch and bycatch mortality of protected species, juvenile sharks, and other finfish in shark drift gillnets, and because bycatch of endangered species in this fishery is regulated under the Endangered Species Act and Marine Mammal Protection Act already, NMFS is not prohibiting use of this gear in shark fisheries at this time. NMFS requires 100 percent observer coverage in the southeast shark drift gillnet fishery at all times to increase data on catch, effort, bycatch and bycatch mortality rates in this fishery.

Comment 3: NMFS should not adopt the Large Whale Take Reduction Plan regulations, which are implemented under the Marine Mammal Protection Act, under Magnuson-Stevens Act because the purposes and goals of the Acts are different.

Response: NMFS believes that adoption of these regulations under the Magnuson-Stevens Act will increase effective regulatory consistency by regulating fishing activities under the authority of the Magnuson-Stevens Act to comply with Marine Mammal Protection Act objectives. **NOTE: There are inconsistencies between the final rule governing the List of Fisheries and Gear under the Magnuson-Stevens Act (64 FR 4030), the Large Whale Take Reduction Plan regulations under the Marine Mammal Protection Act (64 FR 7529), and the proposed rule to implement the HMS FMP (64 FR 3154), regarding the use of strike nets in the shark drift gillnet fishery. NMFS will address these inconsistencies through future regulatory and other actions.**

Comment 4: NMFS should require 100 percent observer coverage in the southeast shark drift gillnet fishery to make sure that all bycatch is documented.

Response: NMFS agrees.

Comment 5: The Large Whale Take Reduction Plan regulations, which are effective in April, 1999, will have huge economic impacts on, and may eliminate, the southeast shark drift gillnet fishery due to the prohibition on night sets.

Response: The economic effects of the regulations implementing the LWTRP were considered in that rulemaking (62 FR 39175, July 22, 1997; 64 FR 7529, February 16, 1999).

Comment 6: NMFS should not require 100 percent observer coverage in one fishery; observer coverage should be comparable in all fisheries.

Response: NMFS agrees that observer coverage should be comparable in that the level of coverage should be adequate to meet scientific and management data needs. NMFS disagrees that levels of observer coverage must be the same across fisheries that use different gear, fish in different areas, or have different bycatch rates.

Comment 7: NMFS should consider converting all shark drift gillnet vessels to longline gear to reduce bycatch and the costs of monitoring this fishery.

Response: NMFS believes that the combination of the measures in the HMS FMP, including capping the small coastal shark quota, the requirement for 100 percent coverage at all times in southeast shark drift gillnet fishery, and adoption of the Large Whale Take Reduction Plan regulations under Magnuson-Stevens Act, are appropriate to address bycatch concerns in this fishery at this time.

Comment 8: NMFS should require species-specific reporting in the menhaden purse seine fishery, count all dead discards of sharks against the commercial quotas, and encourage use and development of bycatch excluder devices.

Response: NMFS agrees that more species-specific reporting and increased observer coverage may be warranted to determine the catch, effort, and bycatch and bycatch mortality rates in the menhaden purse seine fishery. NMFS intends to fully analyze available information and will work with the appropriate regulatory agencies to consider additional management measures in the future as necessary.

Comment 9: NMFS should implement the authorized gears for sharks as proposed.

Response: NMFS agrees; however, please note the inconsistencies mentioned in Comment 3 above.

Sharks: Public Display Permitting and Reporting

Comment 1: NMFS should implement the proposed shark EFP process because it is necessary to track/enforce the regulations.

Response: NMFS agrees.

Comment 2: NMFS should extend the reporting period to 72 hours at a minimum and ideally to 5 days to allow collectors time to determine whether the animal can adapt to the aquarium (if not, the animals are released alive).

Response: NMFS agrees. In the draft HMS FMP, NMFS proposed to require EFP holders to mail in the information cards for authorized collections within 24 hours of collection to increase the ability to track and enforcement of authorized EFP activities. NMFS received several comments that supported extending the reporting period, and that were consistent with the intention of selected EFP process. Therefore, NMFS extends the reporting period to 5 days to allow collectors time to determine the health of the animal.

Comment 3: NMFS should not require American Zoo and Aquarium Association (AZA) membership in order to get an EFP because it is expensive and new aquaria cannot join until they've been open for a couple of years.

Response: NMFS agrees. The draft HMS FMP did not specifically propose to require AZA membership in order to receive an EFP, but did discuss the possibility of linking EFP issuance to AZA membership due to the detailed protocol and facility requirements for membership. Due to the inability of new aquariums to obtain AZA accreditation and the burden and expense of the accreditation process, NMFS will not require AZA accreditation but will consider AZA accreditation, or equivalent standards, as meeting the requirement to provide adequate facilities for animal husbandry (under merits of the application).

Comment 4: NMFS should implement quarterly quotas for EFPs to ensure fair and equitable allocation of animals under the public display quota.

Response: NMFS disagrees. The HMS FMP does not establish quarterly quotas for EFPs because the selected annual quota of 60 mt ww should be sufficient to ensure fair and equitable allocation. Should the requests for sharks public display collections increase in the future, NMFS will reconsider the public display quota at that time.

Comment 5: NMFS should not implement the public display quota because the take is insignificant, the delays and burden in the current system are manageable, and aquarium people are honest.

Response: NMFS does not believe that low harvest levels preclude the need for improvements in monitoring and enforcement capabilities, where practicable. Regarding delays and burden under current regulations, NMFS believes that the benefits of increased monitoring and enforcement capabilities are preferable to the status quo.

Comment 6: NMFS should evaluate an EFP request based on the number of animals previously collected, not requested.

Response: NMFS believes that both the number of animals previously requested and collected must be considered in evaluating an application.

Comment 7: NMFS should not require the use of invasive tags which can become infected and are unsightly.

Response: NMFS agrees that the least invasive tags are preferable. NMFS implements the requirement that all sharks harvested under the selected public display regulations be immediately tagged with a Hallprint tag issued by NMFS in order to be considered an authorized collection. The tag may be removed from the animal and kept on file once the animal is transported to the aquarium where it will be displayed. NMFS may consider alternative types of tags as costs and practicalities warrant.

Comment 8: NMFS should develop species-specific public display quotas, especially for sand tiger sharks.

Response: NMFS agrees that species-specific harvest levels are preferable and NMFS may develop species-specific harvest levels as data permit.

Comment 9: Aquariums should be allowed to remove the tags when the animal reaches its final destination and to keep the tags on file.

Response: NMFS agrees and has modified the HMS FMP and final rule accordingly.

Comment 10: NMFS should keep the status quo system because NMFS has not given the EFP process, which was new in 1998, a chance to be evaluated.

Response: NMFS disagrees. The current regulations governing EFP issuance have been in place, and NMFS has been issuing EFPs for sharks for the purposes of public display, since 1996. The prohibition on possession of sand tiger sharks, a popular aquarium species, in 1997 increased the requests and issuance of EFPs for public display in 1997 and 1998. Accordingly, NMFS has had three years to evaluate the current regulations and believes that the selected public display permitting and reporting system is preferable because it allows for increased monitoring and enforcement of the authorized collections.

Comment 11: NMFS should not count animals and tags for fish that are eventually released against the EFP.

Response: NMFS agrees, as long as the releases are live animals.

Comment 12: NMFS should establish a separate public display quota for sharks exported to foreign aquariums.

Response: NMFS disagrees. Sharks harvested in Federal waters in the Atlantic Ocean, Gulf of Mexico, and Caribbean Sea are taken from the same stocks regardless of their ultimate destination such that NMFS does not believe that separate quotas are warranted.

Comment 13: The proposed public display quota of 60 mt ww is reasonable.

Response: NMFS agrees.

Sharks: Anti-Finining

Comment 1: NMFS should implement the proposed total prohibition on finning.

Response: NMFS agrees. As stated in the HMS FMP, extending the prohibition on finning to all species of sharks will greatly enhance enforcement and contribute to rebuilding or maintenance of all shark species.

Comment 2: NMFS should not extend the prohibition on finning sharks because it disadvantages U.S. fishermen relative to foreign competitors and NMFS should allow a tolerance for blue shark fins to be landed.

Response: NMFS disagrees. Finning of sharks within the Federal management unit has been prohibited since the original shark FMP was implemented in 1993 due to excessive waste associated with this practice. NMFS extends the prohibition on finning to all sharks to enhance enforcement and facilitate stock rebuilding and maintenance.

Sharks: Time/area Closures

Comment 1: NMFS received several comments on time and area closures including that NMFS should close important juvenile and subadult EFH areas (such as breeding and nursery areas) to commercial fishing at key times, that NMFS should close juvenile and subadult EFH year round to directed fishing and retention of shark bycatch, that NMFS should close juvenile and subadult shark essential fish habitats at least during the spring pupping season, and that NMFS should not implement any time/area closures but should intensify efforts with states.

Response: NMFS agrees that additional management measures in important juvenile and subadult EFH areas may be appropriate to facilitate rebuilding of large coastal sharks and preventing overfishing of pelagic and small coastal sharks. However, NMFS believes that numerous final actions in the draft HMS FMP will meet conservation goals. Given the limited degree of nursery and pupping areas in Federal waters, NMFS will continue to work with Atlantic and Gulf coastal states and regional fishery management councils and commissions. NMFS intends to work with these organizations to coordinate consistent regulations for sharks in state and Federal waters.

Comment 2: NMFS should implement a time/area closure from January 1 through March 15 between Diamond and Cape Lookout Shoals for one season and then assess its effectiveness at protecting juvenile and subadult sandbar and dusky sharks, reducing waste, and easing enforcement.

Response: As stated in the HMS FMP, NMFS did consider a time/area closure for sandbar and dusky shark juvenile and subadult wintering EFH off Cape Hatteras, NC, which closely coincides with the area suggested. NMFS did not implement such a closure because the State of North Carolina's proclamation prohibiting commercial retention of all sharks is expected to eliminate the juvenile sandbar and dusky shark winter fishery, thereby addressing effectively the need to protect those juvenile sizes. However, additional management measures may be necessary in the future and NMFS may consider time and/or area closures at that time.

Comment 3: NMFS should close the juvenile and subadult wintering EFH off North Carolina to directed shark fishing and retention of all shark bycatch.

Response: NMFS disagrees for the reasons stated above.

Comment 4: Counting dead discards against quotas is not a substitute for reducing shark bycatch and NMFS should consider additional management measures to reduce bycatch and bycatch mortality of sharks.

Response: NMFS agrees that counting dead discards against quotas is not a substitute for reducing shark bycatch and NMFS does not intend this final action to substitute for other measures. Several final actions will affect bycatch and bycatch mortality rates of sharks in other HMS fisheries as well as bycatch and bycatch rates of other species in shark fisheries. NMFS is not implementing time/area closures of juvenile and subadult EFH because few areas are within NMFS' jurisdiction and because NMFS believes that the combination of final actions in the HMS FMP will reduce effective fishing mortality sufficiently to allow rebuilding. However, NMFS intends to continue working with regional councils, states, and commissions to address bycatch of sharks in other fisheries and to increase observer coverage in directed shark fisheries, particularly the southeast shark gillnet fishery, to determine bycatch and bycatch mortality of other species in

shark fisheries. NMFS may consider additional management measures, including time and/or area closures, to reduce bycatch and bycatch mortality in shark fisheries and in other fisheries in the future.

Sharks: Prohibited Species

Comment 1: NMFS should implement the prohibitions on possession for all species proposed as part of the policy change from prohibiting species that cannot withstand fishing pressure to one allowing retention of only those species known to be able to withstand fishing pressure.

Response: NMFS agrees.

Comment 2: NMFS should not include more species into the prohibited species group because enforcement is a problem and it is difficult to distinguish certain sharks from each other.

Response: NMFS acknowledges that some of the prohibited species are difficult to distinguish from species that are allowed to be retained. However, as stated in the HMS FMP, the benefits of preventing directed fisheries and/or the development of markets for species that may not be able to withstand directed fishing pressure far outweigh the drawbacks of increasing regulatory discards, especially since NMFS believes that the magnitude of such regulatory discards is likely to be minor. Regarding problems of enforcement, additional training and education in shark identification as well as reducing the number of shark species authorized for retention may facilitate enforcement. The approach taken in the FMP should encourage fishermen who have doubts about the identification of a certain fish to release rather than retain it, thereby reducing fishing mortality of fish that are difficult to identify.

Comment 3: The proposed additions to the prohibited species list will increase dead discards because certain sharks are already dead when gear is retrieved. It would be better to utilize the mortality than discard.

Response: NMFS acknowledges that, for sharks that come to the vessel dead, adding them to the prohibited species list will increase regulatory discards. NMFS also acknowledges that adding such species to the prohibited species list will prevent utilization of such mortality. However, as stated in the HMS FMP, the benefits of preventing directed fisheries and/or markets for species that may not be able to withstand directed fishing pressure far outweigh the drawbacks of increasing regulatory discards, especially since NMFS believes that the magnitude of such regulatory discards is likely to be minor. As these species could have been retained previously and most have not been landed in large volume to date (except dusky sharks, see below), NMFS believes that most of these species are either not currently marketable or are not frequently encountered.

Comment 4: NMFS received numerous comments on the proposal to add dusky sharks to the prohibited species management group, including complete support of the measure as proposed, support of a commercial prohibition with an allowance for recreational catches if there was a high minimum size, support of more regional management since the problems with dusky sharks seem to be mostly in the Atlantic, opposition to the proposal because current regulations provide adequate protection, concerns that a dusky shark prohibition will lead to data degradation because they will be landed as sandbar sharks due to their high market value, and concerns that a prohibition on dusky sharks for the Gulf of Mexico will increase waste and regulatory discards

because they all come to the boat dead or because fishermen will discard all sandbar sharks as well because they cannot be distinguished from dusky sharks.

Response: By prohibiting possession of dusky sharks, NMFS expects that fishermen will adjust their fishing activities accordingly. Further, although many dusky sharks are dead when brought on board the vessel, some are not dead and requiring their release will reduce fishing mortality. Additionally, other measures in the FMP will reduce fishing effort and therefore catch as well. NMFS also notes that dusky sharks have been placed on the Candidate Species List for the Endangered Species Act due to their stock status which further justifies a prohibition on possession. The most effective way to reduce fishing mortality would be to prohibit fishing for sharks. However, NMFS believes that the measures in the FMP will allow rebuilding while limited commercial fishing for and harvest of sharks can continue.

Comment 5: NMFS should prohibit the possession of sandbar sharks as well as dusky sharks because these species are caught frequently in the same areas on the same gear and because fishermen cannot tell them apart.

Response: NMFS disagrees that such a measure, which would essentially close directed commercial shark fisheries, is necessary to meet conservation goals and rebuild sandbar shark stocks. NMFS believes that the combination of final actions in the HMS FMP will rebuild sandbar sharks while allowing limited commercial harvest of sharks to continue.

Comment 6: NMFS should consider implementing a minimum size and maximum size for dusky sharks to protect both juveniles and adults. Since the largest sandbar shark is smaller than the largest dusky shark, a maximum size limit may allow fishing on all adult sandbar sharks while limiting fishing on dusky sharks to only a portion of the population.

Response: At this time, NMFS believes that a complete prohibition on dusky sharks is warranted due to their severe population declines and low reproductive rate. NMFS may consider a minimum and maximum size limit as appropriate in the future as dusky shark populations rebuild.

Comment 7: Data do not support adding dusky, bignose, and bigeye thresher sharks to the prohibited species list; just because these species are not landed does not mean that they are not out there.

Response: NMFS disagrees that data do not support the prohibition on possession of dusky sharks. Catch rate data indicate large population declines of dusky sharks since the 1970s and NMFS is concerned that even bycatch mortality alone may negatively impact this species' ability to rebuild to Maximum sustainable yield levels due to its low reproductive rate. Regarding the prohibition on possession of bignose and bigeye thresher sharks, as stated in the HMS FMP, the addition of these species to the prohibited species list is a precautionary measure to ensure that directed fisheries and/or markets do not develop, and is not based on evidence of stock declines.

Comment 8: NMFS should take longfin mako and blue sharks off the prohibited species list and add them to the pelagic list.

Response: NMFS disagrees. As stated in the HMS FMP, these species are added to the prohibited species list because they are not currently landed and including them on the prohibited species list will ensure that directed fisheries and/or markets do not develop until it is known that these species can withstand specified levels of fishing mortality.

Comment 9: NMFS should not prohibit night sharks because data indicating declines in catches are due to fishermen avoiding areas with night sharks in order to avoid small swordfish.

Response: NMFS acknowledges that changes in fishing patterns may affect catches and catch rate data and NMFS has listed this issue as a research area for further investigation. NMFS disagrees that prohibiting possession of night sharks based on existing data is inappropriate at this time; however, NMFS may consider additional management measures, including removing night sharks from the prohibited species management group, as data warrant.

Comment 10: NMFS received numerous comments on the proposal to add blue sharks to the prohibited species management group, including that NMFS should not add blue sharks to the prohibited species management group because the catch rate data in the HMS FMP do not warrant a prohibition, that it is unfair and discriminatory to ban harvest of blue sharks in the recreational fishery while the commercial fisheries can kill 273 mt dw of blue sharks through the dead discard quota contrary to NS4 and section 304(g) of the Magnuson-Stevens Act, that blue sharks are one of the last available species for recreational fisheries as regulations on other species have become more restrictive, that the prohibition on blue sharks would have significant economic impacts because numerous tournaments and charter operations in the mid-Atlantic and northeast target blue sharks, that waste is not as prevalent as the HMS FMP indicates because some tournaments provide blue shark meat to food banks and prisons, and that prohibiting blue sharks will increase regulatory discards, contrary to NS 9.

Response: NMFS agrees that blue sharks should not be added to the prohibited species management group. As stated in the draft HMS FMP, NMFS proposed the prohibition on blue sharks to address concerns regarding the high numbers of blue sharks discarded dead in commercial fisheries by creating an incentive to reduce blue shark discards (especially dead discards). NMFS proposed the prohibition on blue sharks for both the commercial and recreational fisheries to be equitable to all user groups. However, NMFS received substantial comments describing the social and economic impacts of the proposal to prohibit possession of blue sharks. In part due to these comments, the upcoming ICCAT SCRS meeting to analyze pelagic shark catch rate data, and the establishment of a blue shark quota against which landings and dead discards will be counted, NMFS withdraws the proposal and does not implement the prohibition on possession of blue sharks. By establishing a blue shark commercial quota and reducing that quota by blue shark dead discards as well as landings, NMFS hopes to create an incentive to maximize the survival of blue sharks caught incidentally to other fishing operations. NMFS will reduce the pelagic shark quota by any overharvest of the blue shark quota to address concerns that dead discards of blue sharks can constitute a significant portion of the pelagic shark quota. If dead discards of blue sharks do not exceed the selected 273 mt dw quota, the pelagic shark quota would not be affected.

Comment 11: NMFS should maintain the commercial prohibitions on those species of concern (like blue sharks) but should allow recreational harvest with a high minimum size to continue because the impacts of recreational harvest are so low.

Response: NMFS disagrees. As stated in the draft HMS FMP, NMFS proposed the prohibition on possession of several shark species for both the commercial and recreational fisheries to be equitable to all user groups. While bycatch and bycatch mortality rates may warrant consideration of allowing retention of species by some user groups while denying access to other user groups in the future, NMFS believes that regulations on retention should apply to all

user groups equally at this time.

Comment 12: Environmental groups should put up some money for a “dusky fund” to pay for fishermen to photograph and release all the dusky sharks they catch.

Response: This comment is not within NMFS’ authority to implement.

Sharks: Commercial Fishery

Comment 1: NMFS should ban commercial fishing for sharks, stop all sales of sharks caught offshore of the United States, and not allow any shark parts (especially fins) to be exported or consumed domestically.

Response: NMFS disagrees.

Comment 2: NMFS’ proposed alternatives will destroy the directed shark fishery and do not provide for sustained participation by directed shark fishermen and their communities, contrary to NS 8.

Response: NMFS acknowledges that the final actions will likely have a significant economic impact on some shark fishermen, particularly large coastal shark fishermen. As stated in the HMS FMP, NMFS specifically chose the final actions, as a group, both to minimize social and economic impacts to the extent practicable and to meet the goals of the HMS FMP and the Magnuson-Stevens Act to rebuild overfished fisheries. The final action attempts to maximize fishing opportunities while attaining the rebuilding requirements of the Magnuson-Stevens Act.

Comment 3: NMFS should schedule fishery openings for specified periods and adjust the season-specific quotas the following year.

Response: NMFS agrees.

Comment 4: NMFS should count dead discards and state commercial landings made after Federal closure against the quotas.

Response: NMFS agrees.

Comment 5: Counting dead discards and state commercial landings after Federal closures against the quotas is “double-dipping” in that the assessments already account for dead discards and state landings and taking them off the quotas will doubly reduce the quotas.

Response: NMFS disagrees. Dead discards and landings in state waters after Federal closures are included in the stock assessments when evaluating stock status and making projections for rebuilding based on different harvest levels. However, dead discards and landings in state waters after Federal closures have not been included in establishing past total harvest levels, which has likely contributed to the need for recent harvest reductions. If NMFS does not include all mortalities when establishing harvest levels, actual harvest levels are set too high and total mortalities exceed levels that would allow rebuilding.

Comment 6: NMFS should establish a secondary target species quota for pelagic longline fisheries to allow secondary catches of large coastal sharks and pelagic sharks on pelagic longline vessels to be landed and to reduce waste.

Response: NMFS agrees that separate quotas or set-asides may be appropriate for directed

and/or incidental fisheries or different gears. NMFS may consider further subdivisions of available shark quotas once limited access is implemented and appropriate quotas or set-asides can be determined.

Comment 7: NMFS should promote fuller utilization of catches instead of increasing regulatory discards. NMFS should consider eliminating all discards and requiring fishermen to land all their catches, which would provide true data and eliminate waste.

Response: NMFS agrees that fuller utilization of catches, consistent with conservation objectives and other applicable law, is preferable to regulatory discards. NMFS may consider additional management measures, including retention of all catches which are counted against applicable quotas, in the future as appropriate.

Comment 8: Measures for commercial fisheries should not be delayed pending development of a vessel buyback program.

Response: NMFS agrees.

Comment 9: NMFS should buy back commercial shark vessels.

Response: NMFS has the authority to administer a vessel buyback program pending availability of funds.

Comment 10: NMFS should move finetooth sharks from the small coastal shark management group to the large coastal shark management group.

Response: NMFS disagrees that finetooth sharks should be moved from the small coastal shark management group to the large coastal shark management group at this time because finetooth sharks have not been included in the large coastal shark stock assessments to date. However, NMFS may consider adjustments to management groups under the framework procedure in the future.

Comment 11: NMFS should implement quarterly quotas to distribute shark catches more evenly.

Response: NMFS disagrees. The HMS FMP establishes several measures to address derby fishing conditions and distribution of shark catches. However, NMFS may consider additional measures, including quarterly quotas, as appropriate in the future.

Comment 12: NMFS should have its assessments peer reviewed before taking any further actions, especially since the 1997 regulations are still the subject of legal review.

Response: NMFS disagrees. The 1998 stock assessment represents the best available scientific information and peer review prior to implementing these measures is not necessary.

Comment 13: NMFS should reduce quotas.

Response: NMFS agrees that commercial quota reductions are needed to rebuild large coastal sharks. A commercial quota cap is proposed to prevent excessive growth in small coastal shark fisheries. NMFS believes that the actions, including subquotas for porbeagle and blue sharks, under pelagic shark commercial quotas will meet conservation goals at current quota levels.

Comment 14: NMFS should hold workshops for commercial fishermen using rod and reel.

Response: NMFS agrees. NMFS intends to increase public education and outreach efforts including workshops for commercial fishermen.

Comment 15: NMFS should not issue any experimental commercial shark fishing permits because large coastal sharks are severely overfished and pelagic and small coastal sharks are fully fished and any new gears will only increase derby conditions.

Response: NMFS believes that the status of shark stocks must be considered in the decision on whether to issue experimental fishing permits in commercial fisheries.

Large Coastal Sharks

Comment 1: NMFS should establish the proposed ridgeback large coastal shark subgroup with the 4.5 foot FL minimum size and the non-ridgeback large coastal shark subgroup with the reduced quota of 218 mt dw.

Response: NMFS agrees.

Comment 2: NMFS should close the directed large coastal shark fishery and apply any available quota for this group to the unavoidable bycatch in the pelagic longline fisheries for other HMS. If it is concluded that these actions would preclude rebuilding of the coastal shark stocks, then neither recreational nor commercial harvest should be allowed until the stocks are rebuilt.

Response: NMFS disagrees as noted above.

Comment 3: NMFS should deal with sharks on an emergency basis and cut the quota in half again.

Response: NMFS is reducing the non-ridgeback large coastal shark and small coastal shark quotas by 66 and 80 percent by weight, respectively, in addition to other measures (e.g., counting dead discards against the quota) that may further reduce the large coastal sharks, pelagic, and small coastal shark quotas, consistent with the conservation goals.

Comment 4: The ridgeback large coastal shark quota, in addition to the prohibitions on possession of dusky and other sharks, may actually increase fishing mortality on sandbar sharks and NMFS should reduce the quota on ridgeback large coastal sharks in addition to the minimum size.

Response: NMFS is aware that the prohibitions on possession of dusky and other sharks may increase fishing effort and mortality on sandbar sharks. However, dusky sharks comprised 2 and 5 percent of commercial shark landings in 1996 and 1997, respectively, and other prohibited species comprised less than 1 percent. Therefore, NMFS does not expect increased effort to be significant because the reductions in landings due to the prohibition of these species are not large. Additionally, NMFS believes that the combination of final actions will sufficiently reduce effective fishing mortality to allow rebuilding of sandbar and other ridgeback large coastal sharks.

Comment 5: The proposed ridgeback vs. non-ridgeback separation would skew the large coastal shark quota toward slower-growing ridgebacks and could be extremely detrimental to their recovery. Status quo on the large coastal shark management group except for overall quota

levels would be better.

Response: NMFS disagrees. As stated in the HMS FMP, the final actions that establish ridgeback and non-ridgeback large coastal shark subgroups with separate management is based in part on the recommendation of the 1998 SEW that “[e]very effort should be made to manage species separately.” These actions do not manage on an actual species level because NMFS believes that the identification and enforcement problems of species-specific management are too great at this time. However, these actions will allow for management measures to be more tailored to those species complexes within the larger large coastal shark unit with which different fisheries interact. These actions will establish higher harvest levels, but with a minimum size, for the ridgeback large coastal sharks than harvest levels for the non-ridgeback large coastal sharks due to the lack of size-depth segregation of the primary non-ridgeback large coastal sharks as well as new biological data that indicate that blacktip sharks have a lower reproductive rate than previously thought. For these reasons, NMFS selected a lower non-ridgeback large coastal shark harvest level than that for ridgeback large coastal sharks, and does not believe that these actions will be detrimental to ridgeback large coastal shark rebuilding. NMFS believes that these separate management measures will allow for more tailored rebuilding programs than keeping all 22 species of the large coastal shark management group as an aggregate.

Comment 6: NMFS received several comments on minimum sizes for large coastal sharks, including support of the proposed limit, opposition to the proposed limit, that NMFS should implement species-specific minimum sizes and not an arbitrary 4.5 feet minimum size, that NMFS should implement a 120 cm minimum size for ridgeback large coastal sharks, that NMFS should implement a single minimum size for all large coastal sharks, and that NMFS should not implement a minimum size on sharks unless that minimum size is applied to all fishermen throughout the species’ range.

Response: NMFS agrees that a single minimum size for ridgeback large coastal sharks is warranted. As stated in the HMS FMP, a single minimum size of 137 cm FL for all ridgeback large coastal sharks, based on the age at first maturity for sandbar sharks, will afford year-round protection in Federal waters for the juvenile and subadult sizes that are the most sensitive to fishing mortality. This minimum size for the ridgeback large coastal shark subgroup is selected because the sandbar shark, the primary species in the commercial and recreational fisheries, segregates by size and depth so that fishing effort can be concentrated on the less sensitive adults. No minimum size is implemented for the non-ridgeback large coastal shark subgroup because the primary species in this subgroup, the blacktip shark, does not segregate by size and depth such that a minimum size may actually increase effective fishing mortality (more small fish would be caught and discarded in order to harvest the same quantity of larger fish). NMFS does not believe that species-specific minimum sizes are practicable at this time due to the lack of species-specific biological information on some species such that the appropriate minimum size is unknown and due to the practical problems of education and enforcement of multiple minimum sizes. NMFS believes that a minimum size on ridgeback large coastal sharks is appropriate despite the lack of international management because strong domestic management is critical to laying a foundation for international management and to compliance with domestic law.

Comment 7: Because some small fish will still be caught in deeper water where they will be regulatory discards, a minimum size will increase overall mortality rates because at least some of those small fish will be discarded dead.

Response: NMFS is aware that some undersized ridgeback large coastal sharks will still be caught in commercial fishing operations, which will be regulatory discards, and that some of these fish will be discarded dead. As stated in the HMS FMP, NMFS believes that such bycatch and bycatch mortality will be minimized to the extent practicable due to the size-depth segregation that sandbar and dusky sharks exhibit that should allow fishing efforts to concentrate on the mature adults. However, should the bycatch and bycatch mortality of undersized ridgeback large coastal sharks be higher than anticipated (based on observer data) and impede or jeopardize rebuilding, then NMFS may consider additional management measures to address these issues.

Comment 8: The proposed minimum size on ridgeback large coastal sharks will increase waste because many undersized fish come to the boat dead. This also encourages illegal fishing activity.

Response: NMFS acknowledges that the minimum size on ridgeback large coastal sharks may increase regulatory discards due to the inability of fishermen to land undersized fish and may increase waste if undersized fish are brought to the boat dead. As stated in the HMS FMP, NMFS is implementing a minimum size for ridgeback large coastal sharks due to observer data which indicate that sandbar sharks, the primary target species, segregate by size and depth so that fishing effort can be concentrated on adult sharks offshore. This size-depth segregation should minimize the amount of undersized fish caught and discarded (both dead and alive) such that regulatory discards and waste should also be minimized. (Due to the lack of depth-size segregation of the primary non-ridgeback large coastal sharks species, the blacktip shark, NMFS did not propose or implement a minimum size for this subgroup.) NMFS may consider additional management measures to address concerns regarding regulatory discards and waste due to the selected minimum size on ridgeback large coastal sharks.

Comment 9: The adoption of a minimum size for ridgebacks is a good attempt to protect juveniles, but position of forward measurement point is too variable. The first anterior cartilaginous dorsal fin ray (exposed when dorsal fin is removed) would be better.

Response: NMFS agrees and changes the acceptable measurement of a dressed ridgeback large coastal sharks carcass from the first anterior cartilaginous dorsal fin ray to the precaudal pit or terminal point of the carcass to determine the size of ridgeback large coastal sharks.

Comment 10: NMFS should restore the 1996 quota levels and implement minimum sizes, time/area closures, and limited access to control effort instead.

Response: NMFS disagrees. Status quo harvest levels for large coastal sharks (which are 50 percent lower than 1996 harvest levels) would not meet NS 1 to prevent overfishing and rebuild overfished fisheries. NMFS does not believe that minimum sizes, time/area closures, and limited access would sufficiently reduce effective fishing mortality to allow large coastal shark rebuilding under 1996 quota levels.

Comment 11: NMFS should maintain the ridgeback large coastal shark quota at 642 mt dw.

Response: NMFS agrees, subject to the final actions to take dead discards and state landings after Federal closures off Federal quotas and as reduced by the public display and scientific research quota.

Comment 12: NMFS should not reduce the non-ridgeback large coastal shark quota but

should leave it at 642.5 mt dw.

Response: NMFS disagrees. The final action for non-ridgeback large coastal shark quota levels included a reduction of 66 percent by weight in part due to new biological information on blacktip sharks, and the fact that 1997 quota reduction of 50 percent was not as effective as expected. NMFS believes that without such a reduction in the non-ridgeback large coastal shark quota, these stocks will not rebuild, contrary to NS 1.

Comment 13: NMFS should phase in the reduction in the non-ridgeback large coastal shark quota because the 1997 reduction is still under legal review, the 1998 stock assessment for blacktips was poorly founded, and the problem of Mexican catches has not been addressed bilaterally.

Response: NMFS disagrees. The alternative to phase in the reduction in then non-ridgeback large coastal shark quota was not selected due to NMFS' concerns that phased-in quota reductions may not be appropriate for species or species complexes that require such long rebuilding periods. Additionally, NMFS reduced the large coastal shark commercial landings in 1993 when the original shark FMP was established and maintained that landings level until 1997 when NMFS reduced the large coastal shark commercial quota again as an interim measure pending establishment of a long-term rebuilding program. NMFS believes that the 1993 quota and 1997 interim reduction have already essentially phased in the reductions necessary for rebuilding large coastal sharks and that no further phase-in is warranted.

Comment 14: Limited access will be ineffective.

Response: NMFS disagrees. NMFS acknowledges that limited access will not solve all of the problems in the shark commercial fisheries but believes it is a significant first step in addressing overcapitalization.

Comment 15: NMFS received comments that the 4,000 lb commercial retention limit for large coastal shark fisheries should be maintained, that the commercial retention limit is too high, and that the commercial retention limit will result in discards.

Response: NMFS believes that the commercial large coastal shark retention limit helps to extend the large coastal shark seasons and that decreases in the retention limit may reduce the profitability of fishing trips and exacerbate derby fishing conditions. NMFS believes that the benefits of preventing derby fishing conditions from worsening through the commercial large coastal shark retention limit, despite potentially increasing discards, outweigh the negative impacts of those discards.

Comment 16: A seven percent return rate of sandbar sharks from Mexico constitutes a significant source of mortality and NMFS should consider that mortality in stock assessments.

Response: NMFS did consider Mexican catches of sandbar sharks in the 1998 SEW. As stated in the 1998 SEW Final Report, catches of large coastal sharks in Mexican fisheries were investigated and results from an intensive monitoring project of the artisanal shark fishery showed that sandbar sharks represented only 0.6 percent of the landings numerically. NMFS believes that these results are illustrative because the artisanal coastal fishery is estimated to account for about 80 percent of the total shark production in the Mexican side of the Gulf of Mexico. The low percentage of sandbar sharks in the Mexican artisanal fishery landings as well as a relatively low percentage of tag returns from Mexican waters did not support inclusion of Mexican landings in

the species-specific assessment for sandbar sharks conducted at the 1998 SEW. Should additional information become available indicating that Mexican catches of sandbar sharks are substantial, NMFS will include this information in the stock assessments for this species.

Small Coastal Sharks

Comment 1: NMFS received several comments on the small coastal shark commercial quota including that the lower cap on small coastal shark harvest is good, that NMFS should set small coastal shark quota lower than 1997 landings and not higher, that the 10 percent cap was arbitrary and the small coastal shark stocks are declining, that NMFS should cap the small coastal shark quota at 1997 levels and not 10 percent above, and that NMFS should keep the status quo for the small coastal shark quota, at least until limited access is in place.

Response: A cap on the small coastal shark quota at 10 percent above 1997 levels will prevent large expansions in the small coastal shark fishery while minimizing social and economic impacts pending additional assessment of small coastal shark stock status. NMFS acknowledges that the loss of opportunity for substantial fishery expansion may have negative social and economic impacts. NMFS notes that the best available data on small coastal sharks indicate that catch rates for Atlantic sharpnose sharks, the dominant species in this management group, are not declining. Regarding the comment to cap the small coastal shark quota at 1997 levels, not 10 percent above, NMFS notes that this measure is precautionary and that 1998 fishing levels may have increased (1998 landings data are not yet available). A commercial quota cap 10 percent above 1997 levels will minimize negative social and economic impacts if 1998 harvest levels exceeded 1997 levels. NMFS disagrees that status quo for the small coastal shark quota is appropriate because the current quota is based on Maximum sustainable yield levels from the assessment that supported the original shark FMP. Concerns have been raised by members of the HMS AP and members of the public that the assessment in the original shark FMP was overly optimistic in its estimation of small coastal shark intrinsic rates of increase and the subsequent levels of fishing mortality that this group can withstand. The final action to cap the small coastal shark quota is selected because of these concerns, because commercial fishery landings statistics may substantially underestimate fishing mortality due to the use of small coastal sharks as bait that are not reported as landings, and because it would eliminate the potential for excessive growth.

Comment 2: NMFS should require species-specific reporting of all small coastal shark catches, landings, and disposition of the catch to determine the extent and impacts of small coastal sharks being used for bait.

Response: NMFS agrees that additional reporting and observer coverage may be necessary to determine the magnitude of “cryptic mortality” of small coastal sharks due to the use of small coastal sharks as bait. Charter/headboat logbooks and voluntary observers will help collect data on this issue in recreational fisheries. NMFS may consider additional management measures to address this issue.

Pelagic Sharks

Comment 1: NMFS should keep the status quo for the pelagic shark quota because NMFS should not implement any precautionary caps or get out in front of international management, which will disadvantage any future U.S. allocation and/or influence.

Response: NMFS believes that precautionary measures for pelagic sharks are warranted due to concerns regarding the sustainability of current fishing mortality rates and the potential for increased fishing effort on those species known to have limited capacity to withstand fishing pressure (e.g., porbeagle sharks). The final actions to establish a species-specific quota for porbeagle sharks at 10 percent higher than recent landings, to reduce the pelagic shark quota by the porbeagle quota, to establish a quota for blue sharks, and to reduce the pelagic shark quota by any overharvest of the blue shark quota, are primarily precautionary and do not substantially alter the status quo for pelagic sharks. Breaking out the porbeagle quota does not reduce overall harvest levels for pelagic sharks and the pelagic shark quota will only be reduced if blue shark landings and dead discards exceed 273 mt dw. Since the majority of blue sharks are released alive and anecdotal evidence indicates that many of the blue sharks released dead could be released alive if fishing practices were altered slightly, NMFS believes that the incentive to maximize blue shark survival may result in the blue shark quota not being exceeded and the pelagic shark quota not being reduced. Therefore, these final actions may not substantially alter the status quo but would still establish mechanisms to address fishing mortality rate and bycatch and bycatch mortality concerns in the future. Regarding comments that the United States is getting ahead of international management and disadvantaging U.S. fishermen, NMFS believes that precautionary steps are appropriate even in the absence of international management because preventing overfishing will help ensure that U.S. fishermen are not disadvantaged due to stock declines. Additionally, by taking initiatives for conservation measures, NMFS will have a stronger position at the international table and will rebuild and maintain shark stocks subject to international fishing.

Comment 2: NMFS received several comments on the proposed porbeagle quota including that NMFS should cap the porbeagle quota at the highest landings and not at 10 percent above, and that NMFS should establish a porbeagle quota but reduce it from recent landings to allow rebuilding.

Response: NMFS disagrees. Similar to the rationale for a commercial quota cap for small coastal sharks at 10 percent above 1997 levels (the year of highest recorded landings), capping the porbeagle quota at 10 percent above the highest landings level will prevent large expansions in the porbeagle fishery while minimizing social and economic impacts pending additional assessment of porbeagle stock status. NMFS acknowledges that the loss of opportunity for substantial fishery expansion may have negative social and economic impacts. Additionally, NMFS notes that porbeagle sharks, as part of the pelagic shark management group, are considered fully fished and that this measure is precautionary and 1998 fishing levels may have increased (1998 landings data are not yet available).

Comment 3: NMFS' data on porbeagle sharks are incomplete and substantially underestimate landings.

Response: NMFS has updated the reported landings of porbeagle sharks since the proposed rule, and adjusted the porbeagle quota in the final rule, to establish the porbeagle shark quota at 92 mt dw. NMFS intends to investigate further porbeagle shark landings statistics and may adjust the quota in the future as the data warrant.

Comment 4: Establishment of a species-specific quota for porbeagle sharks will create a porbeagle derby.

Response: NMFS disagrees. The selected porbeagle shark quota is 10 percent higher than

the highest reported landings such that a derby fishery resulting from restrictive quotas is not expected to develop. Nevertheless, given other restrictions on shark fishing, there may be increased fishing pressure on porbeagle sharks, and if so, NMFS will address this in the future.

Comment 5: NMFS' approach in establishing precautionary quotas is inconsistent because the porbeagle and small coastal shark quotas are 10 percent higher than highest landings and the blue shark dead discard quota is the average of 10 years. NMFS should establish a 500 mt dw quota on blue shark landings with a 273 mt dw dead discard cap, and a 250 mt dw quota for porbeagle sharks with 30 mt dw allocated for incidental catches.

Response: NMFS did take different approaches in establishing the precautionary quotas for porbeagle and small coastal sharks and for the proposed blue shark dead discard quota due to the differences in the fisheries. For porbeagle and small coastal sharks, NMFS proposed and implements quotas that are 10 percent higher than the highest reported landings because the intention of these measures is to prevent excessive fishery expansion pending additional stock assessments. Therefore, NMFS believes that essentially capping effort is appropriate at this time. On the other hand, the proposed blue shark dead discard quota was intended to create an incentive to maximize the survival of all blue sharks caught incidentally to other fishing operations while minimizing social and economic impacts and reducing regulatory discards, consistent with the proposal to count dead discards against quotas. In this case, estimates of blue shark dead discards have ranged from approximately 20 to 98 percent of the pelagic shark quota and establishing a dead discard quota 10 percent higher than the highest year's discards would be ineffective in maximizing blue shark survival. Therefore, NMFS proposed to establish a blue shark dead discard quota equivalent to the average of the last 10 years dead discards as a means to create an effective incentive to maximize blue shark survival since the potential for pelagic shark quota reductions due to excessive blue shark dead discards was real. Note that NMFS' final action regarding blue sharks is different than that proposed.

NMFS believes that separate quotas for blue and porbeagle sharks are appropriate but believes that quotas of 773 mt dw and 280 mt dw for blue and porbeagle sharks, respectively, are too high, pending additional stock assessments. NMFS selected 273 mt dw and 92 mt dw for blue and porbeagle sharks, respectively, based on the average of recent dead discards for blue sharks and updated data for porbeagle sharks.

Comment 6: NMFS received numerous comments on the proposed dead discard quota for blue sharks including that dead discards of blue sharks should be placed under the pelagic shark quota, that the pelagic shark quota should not be increased to allow for dead discards of blue sharks, that a "dead discard quota" goes against the mandates of the Magnuson-Stevens Act and NS 9 to reduce and/or eliminate bycatch and bycatch mortality, that NMFS should encourage full utilization of unavoidable mortality and not require discards, that most blue sharks are released alive anyway, and that NMFS should establish a quota for landings and dead discards of blue sharks to reduce data degradation and underreporting.

Response: NMFS establishes a quota for blue sharks of 273 mt dw with any overharvests to come off the pelagic shark quota, in part to create an incentive to reduce blue shark discards, especially dead discards. If NMFS were to take all blue shark dead discards off the pelagic shark quota, the magnitude of reductions in the pelagic shark quota might result in a "vicious cycle" in which the entire pelagic shark quota would become regulatory discards, contrary to NS 9. Because blue sharks are caught incidentally in fisheries targeting other species, blue sharks will

continue to be caught and some discarded dead. By creating an incentive to reduce blue shark dead discards, this action may result in changes in fishing practices that increase blue shark survival rates. NMFS acknowledges that establishing a quota for blue sharks of 273 mt dw may be interpreted as increasing the pelagic shark quota; however, NMFS notes that the pelagic shark quota established in the original shark FMP was based on landings of pelagic sharks from 1986-1991 and that blue sharks landings have ranged from 1-5 mt dw, such that the original pelagic shark quota did not account for blue shark catches and discards.

Comment 7: NMFS should require all live blue sharks be released with a dehooking device.

Response: NMFS currently requires that all sharks not retained be released in manner that ensures the maximum probability of survival. However, NMFS intends to encourage use of dehooking devices as part of its outreach and education efforts.

Comment 8: Prohibiting possession of blue sharks in recreational fisheries but allowing commercial fisheries to kill 273 mt dw violates NS4 and section 304(g) of the Magnuson-Stevens Act.

Response: NMFS agrees that the proposals to prohibit possession of blue sharks in both commercial and recreational fisheries and establish a blue shark dead discard quota may have resulted in perceived inequities among user groups because of the dead discard quota for commercial fisheries. NMFS proposed the prohibition on possession for all fisheries because of concerns that blue sharks could quickly become overfished if directed markets or fisheries developed for them. NMFS proposed to establish a dead discard quota for blue sharks because, in combination with the alternative to count dead discards against quotas, dead discards of blue sharks alone could reduce the entire pelagic shark quota to regulatory discards, contrary to NS 9. However, in part due to comments received during the public comment period, NMFS has reconsidered the alternatives for blue sharks and has determined that the combination of withdrawing the proposal to prohibit possession of blue sharks (i.e., allowing retention), establishing a quota of 273 mt dw for blue sharks against which commercial landings and dead discards would be counted, and reducing the recreational retention limit for all sharks with the addition of a minimum size will meet the conservation objectives of preventing overfishing, establish mechanisms to implement management measures consistent with the precautionary approach, reduce regulatory waste and discards consistent with NS 9, and promote fair and equitable allocation of resources among user groups consistent with NS 4 and section 304(g) of the Magnuson-Stevens Act.

Comment 9: NMFS should not establish species-specific quotas for species of concern but should use target catch requirements to control expansions of landings of incidental catches.

Response: NMFS disagrees that species-specific quotas are inappropriate tools to control fishery expansions but may consider target catch requirements in the future.

Sharks: Recreational Fishery

Comment 1: NMFS received considerable comments on the proposal to establish catch and release fishing only for all large coastal sharks and small coastal sharks, including that NMFS should stop all shark harvest in both commercial and recreational fisheries if the recreational fishery must be closed, that the numbers in recreational and commercial shark fisheries do not support a zero recreational retention limit for recreational shark fisheries while still allowing commercial harvest, that NMFS should not reward fishermen who did the damage and penalize historic recreational fishermen, that the recreational retention limits for shark unfairly impact recreational fishermen and are discriminatory against recreational fishermen, which violates NS 4 and section 304(g), and that recreational fishermen are bearing the brunt of shark conservation.

Response: NMFS proposed catch and release only fishing for all large coastal sharks and small coastal sharks due to the reductions in recreational harvest needed for large coastal sharks under the rebuilding program (about 80 percent), the fact that post-release mortality of sharks in recreational fisheries is unknown, and the continued widespread misidentification of juvenile large coastal sharks as small coastal sharks. However, in part due to these comments, NMFS has reconsidered the combination of actions analyzed for recreational retention limits and has determined that a recreational retention limit of one shark per vessel per trip with a 4.5 foot minimum size and an allowance of one Atlantic sharpnose shark per person per trip (no minimum size) should meet NS 1 guidelines to rebuild overfished fisheries for large coastal sharks and address the difficulties in enforcement and continued widespread misidentification of juvenile large coastal sharks and small coastal sharks. NMFS believes that the final action will provide access fairly and equitably to recreational fishermen (in all geographic regions) and commercial fishermen, consistent with conservation goals and NS 4. Regarding comments that recreational fishermen are bearing the brunt of shark conservation, NMFS notes that numerous final actions will establish substantial additional restrictions and negatively impact commercial fishing sectors.

Comment 2: NMFS received considerable comments regarding recreational retention limits and minimum sizes, ranging from support for the status quo of 2 sharks per trip with an allowance for 2 Atlantic sharpnose sharks per person per trip, 2 sharks per day, 1 pelagic shark per vessel per day regardless of species, 1 large coastal shark per vessel per day, 1 mako shark per angler, 1 shark per vessel per trip and 1 Atlantic sharpnose per person per trip, 1 large coastal shark and 1 pelagic shark per trip with a 4.5 foot minimum size, 2 small coastal sharks per trip and 2 Atlantic sharpnose per trip, 1 shark per person with a maximum of 2 sharks per vessel like the Florida regulations, 2 sharks per trip but no more than one shark of any species, 2 sharks per person per day for all species, no limits on retention for blue sharks, as well as 54 inch, 6 foot, and 300 lb minimum sizes for all sharks.

Response: NMFS proposed a recreational retention limit of a maximum of one pelagic shark per vessel per trip and catch and release only fishing for all large coastal sharks and small coastal sharks because it was expected to meet NS 1 guidelines to rebuild overfished fisheries for large coastal sharks, prevent overfishing for the fully fished pelagic and small coastal sharks, and address the difficulties in enforcement and continued widespread misidentification of juvenile large coastal sharks and small coastal sharks. However, in part due to public comments received, NMFS has reconsidered the combination of alternatives and has determined that a recreational retention limit of 1 shark per vessel per trip with a minimum size of 4.5 feet FL and 1 Atlantic sharpnose shark per person per trip (no minimum size) will reduce recreational harvests by the approximately 80 percent necessary to rebuild large coastal sharks and prevent overfishing of pelagic and small coastal sharks, while also minimizing social and economic impacts.

Comment 3: NMFS should not implement a zero recreational limit for sharks, because a lot of anglers cannot safely reach shortfin mako, oceanic whitetip, and threshers. Southeast Atlantic does not target pelagic sharks but targets small coastal sharks. Pelagic sharks are an unusual catch because they occur too far offshore (about 80 miles to Gulf Stream) and small open vessels can't go that far, which may violate NS 10. The proposed recreational limits do not provide access to comparable substitute species for the southeast, and the proposed recreational limits are biased toward the known NE shark fishery (NS 4).

Response: NMFS agrees that the proposed alternative may have differentially impacted anglers by region in that pelagic sharks are more northern in their distribution as well as nearshore anglers that could not expand their fishing into offshore waters where pelagic sharks predominate. In part due to these comments, NMFS has reconsidered the combination of actions analyzed for recreational retention limits and has determined that a recreational retention limit of one shark per vessel per trip with a 4.5 foot minimum size and an allowance of one Atlantic sharpnose shark per person per trip (no minimum size) should meet NS 1 guidelines to rebuild overfished fisheries for large coastal sharks and prevent overfishing for the fully fished pelagic and small coastal sharks. NMFS believes that the final action will also address the difficulties in enforcement and continued widespread misidentification of juvenile large coastal sharks and small coastal sharks by essentially establishing catch and release fishing only for juvenile large coastal sharks under the selected minimum size and by allowing retention of Atlantic sharpnose sharks, a species easily identified by white spots on the dorsal side. As many small coastal sharks do not reach the selected minimum size, the final action also essentially establishes catch and release only fishing for small coastal sharks, except for Atlantic sharpnose. NMFS believes that the final action will provide access to recreational fishermen in the southeast and Gulf of Mexico regions, consistent with conservation goals and NS 4. NMFS also believes that the final action will provide access to nearshore anglers by allowing retention of species available in these areas, consistent with conservation goals and NS 10.

Comment 4: NMFS received several comments on allocation of shark harvest including that NMFS should restore sharks to historic 98 percent recreational catch, that NMFS should allocate shark harvest for recreational fisherman based upon the average landings occurring during the past three years (1995-97), that the total allowable take of sharks should not be increased so the commercial allocation should be diminished by an amount equal to the recreational allocation, that NMFS should allocate shark harvest for recreational fishermen based on the last 18 years of landings by number, which will equal about two-thirds of the allowable harvest, and that NMFS should not base management and rebuilding on a single year but should base allocation on a 10-15 year time period.

Response: NMFS believes that the selected rebuilding program, with commercial and recreational harvest levels determined by recent harvest as reduced by the selected rebuilding program (described in the FMP and based on the 1998 SEW), is appropriate and will meet NS 1 to rebuild the overfished large coastal sharks and prevent overfishing of pelagic and small coastal sharks. NMFS believes that allocating 98 percent of shark harvests to recreational fisheries would not account for traditional fishing patterns or sustained participation of commercial fisheries and the associated communities. Regarding the time period on which management and rebuilding should be based, NMFS believes that the final action, which uses 1995 as a reference point for rebuilding, is appropriate because the 1996 stock assessment went through that year and NMFS reduced the quotas and retention limits based on that stock assessment, consistent with the

allocations established in the 1993 Shark FMP which were based on several years of data. The rebuilding program established in the HMS FMP builds on the 1996 assessment and 1997 quota and retention limit reductions. In establishing the rebuilding program, NMFS analyzed the effectiveness of the 1997 reductions and any additional reductions necessary to rebuild large coastal sharks consistent with the Magnuson-Stevens Act. Therefore, NMFS believes that the allocations of shark harvest in the HMS FMP are appropriate and reasonable. Regarding the allocation of shark harvest between recreational and commercial sectors, NMFS believes that the final actions in the HMS FMP will provide access fairly and equitably to both sectors, consistent with conservation goals.

Comment 5: NMFS received several comments on the proposal to require all sharks landed by recreational anglers have the heads, fins, and tails attached, including support for the proposal, that NMFS should require anglers keep the heads and fins onboard but should not require the fish to be kept whole because of problems with seafood safety from inadequate freezing, that NMFS should allow anglers to fillet sharks at sea as long as the tails and claspers are retained, and that the requirement for recreational fishermen only is unfair and should be applied to both recreational and commercial fishermen.

Response: These comments warrant further consideration. However, NMFS adopts the requirement for recreational fishermen to keep sharks intact while not imposing a new requirement for commercial fishermen at this time. When the Shark FMP was implemented in 1993, commercial fishermen were allowed to remove and discard heads, tails, and fins and to fillet the sharks at sea to allow more of the available vessel hold capacity to be used for storing the shark carcasses that eventually would be sold. A commercial landing prohibition on filleting sharks at sea was implemented in 1997 in order to increase species-specific identification of carcasses at the dock. The basis for this provision may have changed, but additional public discussion is needed before the regulations are modified. While NMFS strives for consistent regulations for all user groups, concerns about quality and safety of seafood sold for public consumption resulting from inadequate freezing of shark carcasses preclude a similar regulation for commercial shark fisheries at this time. Because individual recreational shark fishermen harvest smaller quantities of sharks per trip and take shorter fishing trips relative to commercial operations, recreational fishermen should be able to adequately ice shark carcasses so as not to compromise seafood safety. Requiring recreational fishermen to keep sharks intact will address continued widespread problems with species-specific identification of sharks in recreational fisheries, decrease enforcement costs, and facilitate species-specific assessments and management.

Comment 6: NMFS has repeatedly ignored requests to implement conservation measures for mako sharks and NMFS should fully protect shortfin makos because their stocks are down.

Response: NMFS is aware that anecdotal evidence regarding catches and catch rates of shortfin mako sharks indicates that the stock size may be declining. Accordingly, the United States will be participating in the ICCAT SCRS meeting to assess catch rates of pelagic sharks in May, 1999. Pending the outcome of that meeting and other assessments of shortfin mako stock size, NMFS believes that the final action to reduce the recreational retention limit to one shark per vessel per trip with a 4.5 foot minimum size will provide additional protection for this species. NMFS may consider additional management measures, including alternative length or weight based minimum sizes or prohibitions on possession, in the future as necessary.

Comment 7: NMFS should consider a 250-300 lb minimum size for blue sharks.

Response: Additional management measures for blue sharks, including a species-specific minimum size, may be warranted and NMFS may consider such a measure in the future.

Comment 8: NMFS should reduce the Atlantic sharpnose retention limit pending additional stock assessments.

Response: NMFS agrees.

Comment 9: NMFS should encourage voluntary release of sharks.

Response: NMFS agrees. NMFS supports all voluntary release of sharks and intends to develop a public education and outreach program that will encourage catch and release and tagging of all released sharks as part of the implementation of this HMS FMP.

Comment 10: NMFS should set dates for all catch and release fishing during the spring pupping seasons.

Response: The final action to establish a recreational retention limit of one shark with a 4.5 foot minimum size is expected to meet NS 1 guidelines to rebuild overfished fisheries for large coastal sharks, as the minimum size will more effectively address the issue of bycatch of juvenile sharks by affording them protection at all times and areas.

Comment 11: NMFS should reduce the large coastal shark recreational retention limits but allow recreational fishermen to continue to target blacktip and spinner sharks.

Response: The final action allows recreational fishermen to target all but the prohibited species of sharks subject to the retention limit of one shark per vessel per trip and the minimum size of 4.5 feet FL.

Comment 12: NMFS should not allow more than 2 hooks per line.

Response: Modifications in fishing practices, including limits on the number of hooks per line, may reduce mortality of released fish. NMFS may consider such management measures in the future.

Comment 13: NMFS should consider male harvest only because it is easy to tell male from female sharks.

Response: The final action to establish a recreational retention limit of one shark per vessel per trip with a 4.5 foot minimum size and to establish an allowance of one Atlantic sharpnose shark per person per trip (no minimum size) is expected to meet NS 1 guidelines to rebuild overfished fisheries for large coastal sharks, prevent overfishing for the fully fished pelagic and small coastal sharks, and address the difficulties in enforcement and continued widespread misidentification of juvenile large coastal sharks and small coastal sharks.

Limited Access: General

Comment 1: Access to the Atlantic swordfish and shark fisheries should be limited based on historical participation as shown by permits and landings thresholds. The goal should be to limit participants to those who not only currently have permits, but who are actively participating in the fishery.

Response: NMFS agrees. NMFS designed this limited access system, in conjunction with constituents at scoping meetings, public hearings, and Advisory Panel meetings, to limit participation to those fishermen who historically held a permit, had a particular level of participation, and are still participating in the fishery. The goal of limited access is to remove latent effort, not active participants.

Comment 2: NMFS received a range of comments regarding limited access and buyback programs, including: Implement the proposed limited access in the swordfish and shark fisheries because both are overcapitalized; the number of vessels permitted to fish must be reduced in order to remove the large amount of latent fishing capacity in these fisheries; implement a permit moratorium first; limited access, as proposed, will maintain the shark derby; reduce the size of the legitimate fishing fleet with a “buyback” program like the one implemented in the New England groundfish fishery; implement a buyout program; require 2 limited access permits be bought to obtain 1 limited access permit; implement the limited access proposal because it is the foundation of managing sharks; and reduce the number of shark permits to the lowest levels possible.

Response: NMFS believes that the limited access system, as a first step, will reduce latent effort and overcapitalization in both the Atlantic swordfish and shark fisheries. A permit moratorium will not address the severe overcapitalization present in both fisheries. Regarding “buyback” programs NMFS recently published a proposed rule on the subject (64 FR 6854). NMFS may consider a buyback program in both fisheries once limited access is established.

Comment 3: Most of the FMP relies on setting up a limited access program. However, because the limited access program as proposed is a temporary measure it makes it difficult to comment on the rest of the FMP.

Response: NMFS disagrees. NMFS does not believe that most of the FMP relies on setting up limited access nor does it consider the limited access program as proposed a temporary measure. Most of the other measures proposed could be implemented without limited access. However, the effectiveness of these measures may be hindered if the fisheries remain overcapitalized. Limited access is meant to be a starting point for rationalizing the effort in both the swordfish and shark fisheries with the available quotas.

Comment 4: Permit issuance and administration should remain consistent.

Response: In developing this limited access program, NMFS employees from management, permit issuance, and enforcement were consulted to ensure consistency between issuing permits under limited access and the way they were issued in the past. Due to limited personnel and resources, NMFS determined that the initial issuance of limited access permits should be from the Office of Sustainable Fisheries, Highly Migratory Species Management Division. NMFS agrees that the current administration and issuance of permits should be maintained through the Southeast Regional Office, with the exception of the initial limited access permits.

Comment 5: Most of the limited access system is incomprehensible and it was impossible to decipher how the limited access proposals apply to each fishery. The administration of permits, described on page 4-10, is inconsistent with regard to who or what entity would be eligible for a limited access permit, depending on the fishery in which the vessel operates.

Response: NMFS attempted to make this limited access system as simple as possible to understand, which is difficult given the differences in the current administration of the swordfish

and shark fisheries. However, because the rule consolidates regulations for all HMS fisheries, this should become easier over time. In both fisheries, permits will be issued to the current vessel owner. In the shark fishery, if the operator qualified the vessel, the permit is valid only when the operator is on board that vessel and this condition is only required until May 1, 2000, which is the first full year after implementation of limited access. After May 1, 2000, the condition requiring the operator to be on board for limited access permits issued based on the qualifications of the operator will expire. Through this condition, NMFS intends to ensure that vessel operators, who helped the owner qualify for a shark permit and who may have an investment in the fishery, will not be negatively impacted by limited access.

Comment 6: Taking away permits is unconstitutional and it is alarming that NMFS would take away permits for reasons other than illegal activities.

Response: There is no property interest in nor right to a permit in the HMS fisheries. NMFS may institute limited access in accordance with the Magnuson-Stevens Act and other applicable law as appropriate.

Comment 7: The proposed limited access system has no conservation benefits.

Response: NMFS disagrees. As stated in the HMS FMP, limited access is intended to address overcapitalization and latent effort in the Atlantic swordfish and shark fisheries, which contribute to the existing, as well as potential for increases in, the “race for fish”, market gluts, unsafe fishing conditions, and general economic inefficiency. NMFS believes that limited access has conservation benefits including better identification of active fishermen for educational workshops to reduce bycatch and bycatch mortality, reductions in derby fishing conditions, and improved safety at sea. NMFS further notes that reducing fishing capacity in overcapitalized fisheries is one of the strategies highlighted in the NOAA Fisheries Strategic Plan (May 1997) to increase long-term economic and social benefit to the nation.

Comment 8: NMFS should address the issues surrounding fleet size versus quota availability in the shark fishery.

Response: NMFS is aware that the limited access system contained in the HMS FMP, while an important first step, may not address all the problems in the Atlantic shark fisheries, including derby fishing conditions and excess harvesting capacity of the fleet relative to available quota. NMFS may consider additional management measures to address these issues in the future.

Comment 9: NMFS should include mahi-mahi (dolphin), little tunny, and wahoo in the HMS limited access system.

Response: NMFS disagrees. As stated in the HMS FMP, management of dolphin and wahoo is currently under development by the South Atlantic Fishery Management Council. Regarding little tunny, the Magnuson-Stevens Act defines “tuna species” under Secretarial management as albacore, bluefin, bigeye, skipjack, and yellowfin tuna. Therefore, little tunny is also outside the jurisdiction of the Secretarial plan for tuna species, contained in the HMS FMP.

Comment 10: NMFS should allow traditional gears (harpoon, handline, rod and reel) to be used on vessels that also have pelagic longline gear on board and should provide reporting abilities on the logbooks for these gears.

Response: NMFS agrees. NMFS believes that use of secondary gear types is reasonable.

NMFS may consider modifications to the pelagic logbook reporting forms as appropriate to accommodate catches and landings using secondary gears.

Comment 11: NMFS should require that vessels earned equal to or more than 50 percent of their income from pelagic longlining to qualify for a permit in the following year.

Response: NMFS disagrees that such a requirement is appropriate at this time. However, NMFS may consider additional measures to further reduce the number of limited access permits in the future as necessary to meet conservation goals and increase long-term economic and social benefit to the nation.

Limited Access: Historical Permits

Comment 1: The preferred eligibility requirement that participants must have had a permit from July 1, 1994 through December 31, 1997, is reasonable, as are the preferred landings eligibility periods of January 1, 1987 to December 31, 1997 for swordfish landings and January 1, 1991 to December 31, 1997 for shark landings.

Response: NMFS agrees.

Limited Access: Landings Thresholds

Comment 1: The numbers proposed for the directed landings threshold preferred alternative for swordfish are too close to incidental bycatch limits. This could push fishermen who are really incidental into the directed category and encourage extra effort. Raising the threshold to 100 swordfish or 408 sharks in any two years would raise the threshold high enough that incidental fishermen would not be given a directed permit. The \$5,000 limit is too low; NMFS should use a \$20,000 threshold from all fishing.

Response: The landings thresholds are based on \$5,000 annual gross revenue from fishing for either swordfish or sharks. NMFS used this level in the past to determine which fishermen are “substantially dependent” on the fishery, and NMFS believes this level of gross revenues from fishing is an appropriate cut off between fishermen who are essentially incidental (land a few fish each year as bycatch) versus directed (actually target the fish at some point during the year). Raising the landings threshold to a level of \$20,000 would force fishermen who target and depend on a variety of fish during the year to fish for swordfish or sharks incidentally. This may put fishermen who are substantially dependent on the fishery out of business and is contrary to the goal of removing latent effort while allowing participating fishermen to continue to fish.

Comment 2: The Larkin *et al.* (1998) price of \$2.96 / lb dressed weight which NMFS used to determine the swordfish landings threshold is wrong. The correct price should be \$2.96 / lb whole weight. This would decrease the \$5,000 threshold to 19 swordfish from 25 swordfish.

Response: NMFS agrees. However, NMFS believes that 25 swordfish may be a better proxy for the \$5,000 threshold given the decrease in average swordfish prices over the past few years and maintains the 25 swordfish per year for two years landings criterion. Alternatively, because the exvessel price of swordfish or sharks depends on the size and quality of the fish as well as market conditions, NMFS will also accept documentation indicating that the vessel owner landed at least \$5,000 gross revenue worth of swordfish (for a swordfish limited access permit) or shark (for shark limited access permit). This documentation will only be accepted in an application or

an appeal.

Comment 3: NMFS should allow swordfish and sharks that were tagged and/or released alive to be counted towards the landings eligibility criteria.

Response: NMFS disagrees. NMFS believes that the eligibility criteria for both sharks and swordfish are lenient enough that fisherman interested in landing sharks or swordfish should be able to qualify for either a directed or an incidental permit without the help of fish that were released alive. Additionally, while NMFS acknowledges and encourages fishermen to tag and release fish with a minimum of injury, NMFS does not have the ability currently to determine from logbook records which fish were released due to regulatory requirements (minimum size, closed seasons) and therefore would not have been legal landings anyway.

Comment 4: NMFS should consider as an alternate eligibility criteria for shark limited access for a directed permit that, for 2 of the past 3 years, 75 percent of income come from commercial fishing with 50,000 lbs dw shark landings. All other permit holders may be given incidental permits.

Response: NMFS disagrees. The landings thresholds are based on a level of fishing of \$5,000 annual gross revenue from fishing for either swordfish or sharks. NMFS used this level in the past to determine which fishermen are “substantially dependent” on the fishery. Raising the landings threshold to 75 percent of income coming from commercial fishing with 50,000 lbs dw shark landings might force fishermen who target and depend on a variety of fish during the year to fish for sharks incidentally. This might put fishermen who are substantially dependent on the fishery out of business and is contrary to the goal of removing latent effort while allowing participating fishermen to continue to fish.

Comment 5: NMFS should allow owners to transfer catch history to the operator.

Response: The limited access system allows for catch history sales or transfer as long as such sales are documented in a written agreement. NMFS will consider such sales or transfer through the application process.

Comment 6: There should be no eligibility requirements for fishermen who fish only in the South Atlantic at this time.

Response: NMFS disagrees. On October 24, 1997 (62 FR 55357), NMFS extended the U.S. management authority to include U.S. fishermen fishing for swordfish in the South Atlantic and established that South Atlantic fishermen were subject to the same regulations, including limited access, as North Atlantic fishermen. NMFS believes that limited access is important in the South Atlantic to prevent the severe overcapitalization and excess harvest capacity that exist in the North Atlantic. Once limited access is in place, NMFS may consider different management measures, as appropriate, in the South Atlantic to address issues unique to that fishery.

Limited Access: Recent History

Comment 1: NMFS should consider allowing 1998 landings, especially since people left the shark fishery after the 1997 large coastal shark quota reduction, or allowing directed shark permit holders to exchange their shark permits for directed swordfish permits. NMFS should not penalize fishermen for diversification since that is what NMFS wanted people to do.

Response: NMFS disagrees. While NMFS is aware that shark fishermen may have left the shark fishery and entered other fisheries after the large coastal shark quota was reduced in 1997, NMFS does not believe that allowing directed shark permit holders to exchange their shark permits for directed swordfish permits is consistent with the goal of limiting access and reducing overcapitalization to the Atlantic swordfish fishery. Regarding 1998 landings, these data are not yet available in usable electronic format and NMFS believes that delaying implementation of limited access for another year will only worsen the overcapitalization that already exists in these fisheries. NMFS regulations allow transfer of limited access permits between private persons/entities.

Limited Access: Incidental Permits

Comment 1: Incidental permits for Atlantic sharks should be given automatically with an Atlantic swordfish directed permit and vice versa.

Response: NMFS agrees that fishermen who initially qualify for an Atlantic swordfish limited access permit (directed or incidental) should be also be provided an incidental shark limited access permit and an Atlantic tunas Longline (formerly incidental) category permit because the gear used to catch swordfish can also catch sharks and tunas incidentally. For the same reasons, NMFS will give fishermen who held an incidental tuna permit in 1998 a shark incidental limited access permit and a swordfish incidental limited access permit. NMFS will not automatically provide directed shark fishermen incidental swordfish or tuna permits because directed bottom longline shark sets rarely catch swordfish and tuna. Note that NMFS implements the requirement that fishermen who enter the swordfish fishery at a later date are responsible for obtaining all three permits (swordfish limited access, shark limited access, and tuna longline) on their own.

Comment 2: The incidental commercial retention limits for sharks are too low. NMFS should, at a minimum, return to the previous proposal of 4 sharks, any species, per vessel per day although evidence has been presented which could increase the large coastal shark commercial retention limit to 9 large coastal sharks per day in some regions. The pelagic shark incidental commercial retention limit is inconsistent with NS 9 because it will increase bycatch and waste. Furthermore, the pelagic shark incidental commercial retention limit should be increased because the pelagic shark quota has not been filled.

Response: NMFS disagrees. As stated in the HMS FMP, NMFS selected a maximum of 5 large coastal sharks per vessel per trip and a maximum of 16 pelagic and small coastal sharks, all species combined, per vessel per trip because analyses indicated that very few trips caught numbers of sharks above these limits. NMFS analyzed the catches (not landings) of large coastal sharks, pelagic, and small coastal sharks reported in the pelagic logbook for large coastal sharks during large coastal shark directed fishery closures and for pelagic sharks when the target species was not reported as sharks. NMFS chose to analyze these trips' catches because NMFS believes that these trips represent truly incidental catches because sharks on these trips either were not the target species or could not be retained. These analyses indicated that during the 1996 large coastal shark closures, over 75 percent of 1,562 trips caught a maximum of one large coastal shark (50 percent of trips did not report catching any large coastal sharks), 10 percent of the trips caught a maximum of 9 to 80 large coastal sharks (although only one percent of trips caught 80 large coastal sharks). Of the 1,631 trips in 1996 where sharks were not targeted, over 75 percent caught a maximum of 5 pelagic sharks (50 percent of trips did not report catching any

pelagic sharks), 10 percent caught a maximum of 25 to 286 pelagic sharks (only one percent of trips caught 286 pelagic sharks). Analyses on 1997 data were similar but slightly lower. NMFS believes that the selected commercial retention limits for incidental shark permit holders are appropriate because very low percentages of trips caught more than these limits.

Additionally, NMFS believes that many of the permits holders who reported large catches of pelagic sharks may qualify for a directed shark permit (if they landed those sharks) such that the incidental commercial retention limits would not apply and the fish could be landed, thus reducing bycatch and waste. If they did not land their catches of pelagic sharks, then receiving an incidental shark permit would not impact their current fishing practices, and bycatch would not be increased although it would also not be reduced. Should such fishermen decide that they would like to land their incidental shark catches above the incidental commercial retention limits, they could obtain a directed limited access permit because the permits are transferable. For large coastal sharks caught during large coastal shark closures, NMFS is aware that these fish are regulatory discards and that the final actions in this FMP may increase the duration of large coastal shark closures and the associated regulatory discards. However, NMFS does not believe that increasing the incidental commercial retention limits is appropriate because it would likely result in landings exceeding the allowable limits and delayed rebuilding for these species. For these reasons, NMFS believes that the selected commercial retention limits for incidental shark permit holders are appropriate and that regulatory discards will be minimized to the extent practicable.

Comment 3: Incidental fisheries should be tightly controlled with quotas.

Response: NMFS agrees.

Limited Access: Swordfish Handgear

Comment 1: The preferred alternative that handgear permits be issued to those who can prove a historical participation in the fishery is reasonable.

Response: NMFS agrees.

Comment 2: The handgear permit should be transferable to ensure the category will not be phased out if the recovery period takes as long as expected or longer.

Response: NMFS agrees and implements transferability of handgear permits for use with handgear only. However, a handgear permit may not be transferred for use with a longline. To further encourage the use of this gear, NMFS may consider allowing incidental or directed permits to be transferred for use with handgear only in the future. This could allow for an increase in the share of the handgear permits in the fishery once the stock recovers.

Comment 3: The preferred alternative for swordfish handgear eligibility is better than previous proposals, but the qualification period does not begin early enough to accommodate traditional fisheries. If limited access for all swordfish gear is necessary, the qualification criteria should also allow crew members on traditional harpoon vessels to be eligible for a vessel permit to fish in the harpoon fishery.

Response: NMFS disagrees. The permit qualification period for swordfish begins with the start of mandatory reporting and permitting. At that time, swordfish fishermen could indicate on their permit applications that they were using harpoons but this was not required. In addition,

NMFS does not have any records identifying the crew on these traditional harpoon vessels. However, if the crew members are still fishing and own a vessel, they may be able to qualify for a handgear permit using the earned income requirement.

Comment 4: The harpoon fishery should remain an open access fishery due to the size selectivity of the gear, the high costs of entry into the fishery, and the low likelihood that open access for the harpoon fishery would lead to overcapitalization and overfishing. A moratorium institutionalizes the exclusion of a historic fishery that was driven from the fishery by the longline fishery and the lack of large fish. Harpooning is the most selective gear type in the fishery and encouraging participation is therefore preferable to institutionalizing participation in a less-selective fishery.

Response: NMFS agrees that the traditional handgear segment should have a place in the fishery. However, NMFS believes that leaving the handgear segment of the swordfish fishery open access would allow for the same potential for overcapitalization that has already occurred in the other segments of the Atlantic swordfish fishery.

Limited Access: BAYS Tunas

Comment 1: Fishermen with a Longline category Atlantic tunas permit (formally Incidental category) should be given a swordfish and shark limited access permit. However, this alternative may need to be modified so that directed tuna permits apply only if used with the same gear that qualified the holder for the swordfish permit.

Response: NMFS agrees and will automatically provide those tuna fishermen who held an Incidental category Atlantic tunas permit in 1998 an incidental shark and swordfish limited access permit for use only with authorized gears (tuna fishermen who meet the directed fishery eligibility criteria will receive directed limited access permits). In both cases, the majority of commercial fishermen would be using pelagic longline gear.

Comment 2: Bottom longline shark fishermen displaced from their fishery should not be given tuna longline permits. They should be bought out or retrained instead.

Response: NMFS agrees that directed shark fishermen should not automatically be provided a tuna Longline category permit because directed bottom longline shark sets rarely catch tuna. Additionally, similar to the rationale for swordfish limited access permits, NMFS does not believe that automatically providing directed shark permit holders with tuna Longline category permits is consistent with the ICCAT recommendation to limit effective fishing effort for yellowfin tuna to 1992 levels or the goal of limiting access and reducing overcapitalization in the fully to overfished Atlantic tunas fishery.

Limited Access: Appeals Process

Comment 1: The appeals process should not be handled by the Chief of the HMS Division, but by some other administrative procedure.

Response: The permit process consists of two parts: the applications and the appeals. Due to limited personnel and resources, the applications (the first part of the process) will be handled by the Chief of the HMS Division because all the information and data used to make the initial determinations are available in this Division. NMFS agrees that the appeals (the second part of

the process) should be handled by a separate administrative procedure. Therefore, the appeals will be handled by appeals officers who will be NOAA employees, but not employees who work in the HMS Division, in order to separate the two decision-making processes. The final agency decision will be made by the Director of the Office of Sustainable Fisheries.

Comment 2: Hardship cases should be included in the appeals procedure.

Response: NMFS disagrees. In the draft HMS FMP, NMFS did not propose to consider hardship cases because any definition of a “hardship” would make it extremely difficult to ensure consistency between decisions on the appeals, and NMFS believes that not allowing hardship cases will ensure that everyone is treated equally with no extraneous information harming or helping their case. This rationale has not changed. In lieu of hardship cases, NMFS will allow exemptions for common situations heard during the comment periods on the previous proposed rules and this FMP.

Comment 3: NMFS should allow oral hearings.

Response: As stated in the draft HMS FMP, NMFS did not propose to allow oral hearings due to the logistical problems and potential inconsistencies with fairness and equity under NS 4. This rationale has not changed.

Limited Access: Harvest Limits

Comment 1: The harvest limit for Atlantic swordfish should be increased to 50 percent of the marketable highly migratory species on board, but not to exceed 15 in number per vessel per trip. Other percentages may be acceptable depending on analyses. NMFS should implement directed catch criteria for pelagic sharks to help prevent directed pelagic shark fisheries from developing.

Response: NMFS disagrees. NMFS believes that target catch limit requirements can cause an increase in mortality by requiring fishermen to fish more than they normally would in order to retain the fish they have already caught. As stated in the HMS FMP, NMFS believes a straight retention limit is easier to enforce and understand. Once limited access is in place, NMFS may explore further options for determining optimal bycatch and incidental allowances.

Limited Access: Transferability

Comment 1: The preferred alternatives regarding the transferability of directed and incidental permits are reasonable.

Response: NMFS agrees.

Comment 2: The draft FMP allows for the splitting of permits (4-37), but the basis for limited access is to limit capacity (by allowing a vessel that was issued both swordfish and shark limited access permits to sell one permit while retaining the other, the harvesting capacity of the overall fleet will increase with the addition of a second vessel where there had been only one) . This is inconsistent and conflicts with the stated intent of limited access. NMFS should adopt transferability requirements consistent with those in the Multispecies and Scallop FMPs. These plans allow transfers of permits to new owners only with the sale of a vessel or to other replacement vessels, provided that the new vessel complies with certain upgrading restrictions.

Response: NMFS disagrees. NMFS believes that selected transferability restrictions are

consistent with the intent of this limited access program of reducing latent effort and rationalizing effort with the available quota. NMFS does not believe that fishermen should have to sell their vessel just because they want to leave the swordfish or shark fisheries. Accordingly, fishermen may transfer their permit with or without the sale of the vessel. However, once they sell their permit, they are out of the fishery. Thus, the capacity and effort in the fishery remain the same.

Comment 3: Non-transferable individual quotas would be the best second step of limited access because any fish not harvested would be conserved, and transferable individual quotas ensure that all fish are harvested.

Response: NMFS may consider transferable and/or non-transferable quotas, as well as other management measures to address fleet size and available quotas, in future rulemaking in conjunction with the HMS AP.

Comment 4: NMFS should allow people who transfer or sell permits without the vessel to keep their permit inactive (not attached to a vessel) for a while so there is sufficient time to find and purchase a sea-worthy vessel. Otherwise, people may have to rush and buy a replacement vessel so they don't lose their permit when they want to sell their current vessel.

Response: NMFS agrees. As is currently allowed in other limited access fisheries, vessel owners may sell their vessel and retain the limited access permits as long as they inform NMFS in writing that the permit is inactive within 30 days of the vessel sale. The vessel owner may then obtain a replacement vessel to which the limited access permit(s) will be transferred, subject to upgrading and ownership restrictions, as applicable.

Limited Access: Upgrading

Comment 1: NMFS should adopt the New England and Mid-Atlantic Fishery Management Council upgrading restrictions to address consistency issues across fisheries.

Response: NMFS agrees.

Comment 2: NMFS should not adopt the same upgrading restrictions as the NEFMC and MAFMC. The majority of fishermen affected by the limited access system for the Atlantic swordfish and shark fisheries do not participate extensively in fisheries that are under the jurisdiction of these councils. Further, the vessel length and horsepower upgrading restrictions developed by the Councils, which are appropriate for trawl fisheries, are not appropriate for longline fisheries. Further, increasing vessel length is an important part of increasing safety at sea, especially for vessels fishing further and further offshore due to time/area closures and other regulations.

Response: NMFS believes that regulatory consistency across fisheries is important to reduce confusion and burdens on fishermen that participate in multiple fisheries under multiple jurisdictions. However, NMFS is aware that the upgrading restrictions adopted by the NEFMC and MAFMC may limit fishermen's abilities to address safety at sea issues related to vessel length and that the upgrading restrictions are more tailored to trawl vessels than the longline vessels. Therefore, NMFS implements the restrictions on vessel upgrading as a final measure at this time to prevent substantial increases in the harvesting capacity of HMS vessels but will consider

alternative criteria to control the harvesting capacity in ways that minimize safety concerns. NMFS will assemble data on hold capacity, consider requesting hold capacity information on permit applications, and work with the AP and affected public to consider proposing HMS - specific vessel upgrading restrictions that account for necessary upgrades in horsepower and vessel length to address safety concerns

Limited Access: Ownership Limits

Comment 1: None of the ownership restrictions proposed (restricting the number of vessels that any entity could own to no more than five percent of the permitted vessels or no restrictions on ownership) are reasonable.

Response: NMFS disagrees. NMFS believes that ownership restrictions are an effective tool for preserving the historical small owner/operator nature of the fishery. As such, NMFS will restrict the number of Atlantic swordfish or shark vessels any one entity can own to no more than five percent of the directed swordfish or shark permitted vessels in the directed fisheries.

Bycatch Reduction

Comment 1: NMFS' plan is not consistent with National Standard 9 to minimize bycatch and bycatch mortality, to the extent practicable.

Response: NMFS disagrees. Numerous measures in the FMP and Amendment improve NMFS' ability to monitor, control, and account for bycatch in estimates of total mortality. NMFS is pursuing gear modifications to reduce bycatch, a time/area closure to reduce Bluefin tuna discards, and is planning educational workshops to minimize bycatch mortality. Further, NMFS seeks to count dead discards against the quota, which will create an incentive for fishermen to avoid bycatch species, to the extent that they can. Also, NMFS is analyzing larger time/area closures in order to protect small swordfish and will present these ongoing analysis to the HMS and Billfish Advisory Panels in June 1999, before publishing a proposed rule in Summer 1999. NMFS has increased reporting requirements in order to collect additional data on bycatch mortality in HMS fisheries. The effectiveness of the bycatch reduction strategy will be assessed annually in the SAFE report.

Comment 2: Commercial fishermen should have to retain all fish that are dead when handled. This would be counted against their retention limit or quota.

Response: NMFS adopted minimum size limits for yellowfin, bluefin, and bigeye tunas, and swordfish, and large coastal sharks in order to discourage fishermen from targeting small fish. NMFS intends that ultimately all dead discards of these species will be counted against the quotas.

Comment 3: Bycatch and bycatch mortality in the recreational fishery could never be analyzed and could never be truly known and therefore should not be addressed in this FMP.

Response: NMFS disagrees. NMFS has identified the examination of post-release mortality in all hook and line fisheries, recreational and commercial, as a research priority. Further, NMFS subscribes to the precautionary approach and intends, once it can be quantified, to account for post-release mortality in all HMS fisheries.

Comment 4: Many different comments were submitted regarding workshops and other

outreach to fishermen: NMFS should require mandatory attendance of permit holders at vessel education workshops to inform fishery participants of bycatch and bycatch mortality reduction techniques. NMFS has already begun the workshops even though no take reduction plan is in place. If fishermen have to attend workshops, they should be compensated for a missed day of work. Fishermen at the workshops know more about releasing fish, turtles, and mammals than the people presenting the workshop. NMFS should use television fishing shows to promote the bycatch mortality reduction strategy for HMS.

Response: NMFS thinks that outreach may be more useful if the program is voluntary. This will allow NMFS to offer workshops as well as informal meetings with fishermen to share recent information on bycatch reduction strategies and new techniques that may be working in other fisheries and to get feedback from fishermen. NMFS has begun the workshops with several objectives in mind; marine mammal bycatch reduction is only one of those objectives. Other reasons for the workshops have included collection of views on comprehensive management systems for pelagic longline fishery management. NMFS agrees that fishermen have far more expertise in releasing large animals at sea. However, the presenters at the workshops will also be providing information on successful methods used in other longline fisheries (e.g., the Pacific swordfish fishery) and can convey information about new research results which may help fishermen to avoid bycatch species. NMFS appreciates the creative suggestion of using the television medium and will consider that medium in the future for developing and distributing information about reducing bycatch and bycatch mortality.

Comment 5: NMFS should establish a target and timetable for reducing bycatch (e.g., 25-75 percent reduction in 5 years) and implement that bycatch plan through time area closures, gear restrictions and counting dead discards against quota.

Response: This FMP implements a number of measures in the swordfish, shark, and tuna fisheries designed to reduce bycatch and bycatch mortality. Limited access to some of the HMS fisheries may change the nature of these fisheries, including possibly reducing bycatch through enhanced education. NMFS will evaluate bycatch rates once limited access and new bycatch measures are implemented in these fisheries before setting targets and timetables that could be unrealistic.

Comment 6: Take reduction measures designed to reduce marine mammal bycatch should not be implemented in this plan under the authority of the Magnuson-Stevens Act. A future take reduction team for pilot whales would likely include representatives from the trawl and pelagic longline fisheries. Because the HMS Division does not cover that fishery and if changes are needed in regulations, it will be easier to make those changes under the MMPA than to amend multiple fishery management plans.

Response: NMFS disagrees. NMFS needs to consider cumulative impacts of all regulatory measures on fishermen and the ecosystem as required under legislative mandate. Therefore, it is very useful to consider the take reduction measures in the context of other measures proposed in this plan. Some take reduction measure can be amended by framework measure (e.g., gear modifications, time/area closures), instead of an amendment to the plan. Measures that apply to other federal fisheries, including the squid, mackerel, and butterfish trawl fishery can also be implemented by the appropriate fishery management plan if NMFS sees fit. NMFS seeks to conserve marine resources in an ecosystem approach, including all bycatch species.

Comment 7: Strategies proposed by the AOCTRT more than two years ago are outdated and ineffective. Rather than publish a plan at this late date, NMFS should reconvene a new team, including other representatives from other fisheries that interact with the same marine mammal stocks.

Response: In this action, NMFS will implement several of the measures recommended by the Atlantic Offshore Cetacean Take Reduction Team to reduce incidental mortalities and serious injuries of pilot whales in the pelagic longline fishery. NMFS intends to reconvene the Atlantic Offshore Cetacean Take Reduction Team to review updated information regarding pilot whales, and to solicit updated recommendations for the pelagic longline fishery. At that time, recommendations to include other fisheries in the take reduction process will be considered.

Comment 8: AOCTRT measures are unfair. Whales have changed their feeding behavior in response to the number of longlines in the water. They now teach their young to take advantage of the fish on the longline.

Response: NMFS cannot comment on the feeding behavior of whales in response to longlines. If the take reduction team is reconvened, the team might consider available information from fishermen on this feeding behavior. In the interim, fishermen should do all that they can to reduce the interactions with whales.

Comment 9: NMFS chooses a definition of bycatch that is not consistent with the Magnuson-Stevens Act. Specifically, NMFS defines fish that are caught and released by recreational fishermen as bycatch.

Response: NMFS' definition is consistent with the Magnuson-Stevens Act. However, as described in Amendment One to the Atlantic billfish fishery management plan, NMFS does not consider released billfish to be bycatch because the Amendment establishes a catch and release program for all billfish released recreationally.

Comment 10: Instead of restricting fishermen, who take relatively few whales, NMFS should shut down shipping and control the actions of the U.S. Navy to reduce interactions with large whales.

Response: NMFS is also concerned about adverse effects to whales caused by the shipping industry and ship operations of other federal agencies, including the U.S. Navy. NMFS has taken a number of actions to reduce the likelihood of ship strikes. NMFS collaborates with the U.S. Coast guard, U.S. Navy, Army Corps of Engineers, as well as state agencies and other organizations to alert ship traffic in U.S. coastal waters to the presence of whales. Additionally, NMFS is required to provide biological opinions on activities of federal agencies that might adversely affect endangered species. Other actions include: regulations that prohibit all approaches within 500 yards of any right whale; work toward the development of cooperative agreements with individual shipping companies to examine voluntary measures ships might take to reduce the possibility of ship strikes; and beginning July 1999, a mandatory right whale ship reporting system that will provide information on right whales directly to mariners as they enter right whale habitat and use incoming reports to assist in identifying measures to reduce future ship strikes.

Gear Modifications

Comment 1: NMFS received numerous comments regarding gear modifications in the pelagic longline fishery to reduce bycatch mortality. These comments included support for: 1) reduced soak time, 2) limited length of mainline, 3) limited number of hooks, and 4) mandated circle hooks. Comments also indicated that some of these measures are difficult to enforce and therefore, should be voluntary measures.

Response: NMFS and the AP considered many of these gear modifications in an earlier draft of the HMS FMP. NMFS rejected many of these alternatives in favor of voluntary measures and increased research on gear modifications.

Comment 2: The proposed limit to the length of mainline is not likely to reduce bycatch mortality of mammals if the data indicate that many fishermen already have lines that short.

Response: NMFS is implementing this measure to set an interim cap on the length of mainline until the take reduction team reassesses the need for other measures.

Comment 3: The measure to require longline vessels to haul their gear in the order it was set should not be implemented.

Response: NMFS agrees. This measure is difficult to enforce and observer data are not explicit about how the gear is set and hauled. If the take reduction team meets again and continues to support this measure, NMFS can do a post-trip interview with observers to get a better idea of how many vessels already do this. Also, NMFS remains concerned about potential safety implications for vessels as this measure may cause them to increase the amount of fuel they carry to accommodate for the extra transit time. Conversely, if vessels do not carry more fuel, this measure would have increased economic impacts as trips would have to be shortened.

Comment 4: NMFS should not require the use of circle hooks in the recreational fishery.

Response: NMFS agrees. NMFS is interested in exploring gear modifications that reduce bycatch mortality and is currently funding research on the use of circle hooks vs. “J-hooks” in the pelagic longline fishery. The HMS and Billfish APs discussed the use of circle hooks at a meeting in July 1998. Representatives of the recreational fishing community expressed their support for the use of circle hooks to reduce post-release mortality in non-trolling situations with the reservation that this alternative would be better implemented in a non-regulatory way. Outreach programs for anglers and commercial fishermen will address gear modifications, including circle hooks, that may reduce post-release mortality.

Comment 5: NMFS should implement gear marking requirements. Another commenter indicated that gear marking requirements will have no effect on reducing bycatch/bycatch mortality of HMS.

Response: This rule imposes gear marking requirements, because they will assist in enforcement of time/area closures and Bluefin tuna catch limits, and could provide information on hooked marine mammals. Time/area closures and longline length restrictions are established to reduce bycatch. While VMS can alert enforcement agents to the presence of fishing gear in a closed area, agents need to approach the gear while it is drifting in the water in order to document a violation. Therefore, gear marking requirements will facilitate enforcement of HMS bycatch reduction measures.

Comment 6: NMFS should require vessels to move after one entanglement with a protected

species. Moving after one entanglement is unenforceable without mandatory observer coverage and therefore success will be difficult to measure. This measure will have no effect on reducing bycatch of HMS.

Response: This rule requires fishermen to move after one entanglement. This measure was recommended by the AOCTRP and responds to recent research results indicating the clustering of protected species. Some fishermen already move after one entanglement in order to protect their gear, protect unwanted species, and fish more efficiently. For fishermen who do not currently do this, it may alleviate some of the problems associated with the capture of protected species and predation on their target species by marine mammals such as pilot whales. This measure is not likely to reduce bycatch of HMS as the comment indicated but it was not designed to do that. This measure may be difficult to enforce but NMFS received positive feedback at the July 1998 AP meeting that it would help to reduce bycatch by informing fishermen who do not usually follow this procedure.

Comment 7: NMFS should require de-hooking devices on board all vessels. However, NMFS needs to define de-hooking devices and eliminate the use of “crucifiers,” a tool reportedly used to release a hook from a fish without having to handle the fish.

Response: NMFS considered this alternative and rejected it due to the difficulty in enforcing it. NMFS is not able, at this time, to approve specific de-hooking devices, although the term “dehooking device” is defined in the final rule. However, NMFS encourages fishermen to use techniques that minimize injury to the fish and to work towards increasing survival of released individuals.

Time/Area Closures

Comment 1: NMFS has received several comments on the proposed pelagic longline time/area closure off the mid-Atlantic and New England coasts, specifically with regard to bycatch and safety, including: Since there is little pelagic longline gear interaction with bluefin tuna in the southern portion of the proposed closed area, NMFS should move the southern boundary to 39° N to provide additional fishing opportunities and minimize safety concerns while still significantly reducing dead discards; NMFS should, in accordance with National Standard 9, achieve reduction in dead discards by changing the longline target catch requirements; the United States has failed to comply with ICCAT recommendations to develop bluefin tuna discard reduction measures; NMFS should analyze and implement additional restrictions, such as number of hooks used, soak time, and other time/area closures in conjunction with the proposed time/area closure, in order to minimize bycatch; NMFS should allow longline fishermen to fish with other allowed gears in an area closed to pelagic longline gear without having to physically remove their pelagic longline spool from the vessel. NMFS also received comment that participants of each category should be responsible for minimizing discards and, if a category is successful in doing so, should receive any resulting catch quota benefit. There were also requests that NMFS better quantify the 60 percent decrease in discards.

Response: In response to public comment regarding the southern boundary of the proposed closure area, NMFS reanalyzed the logbook data used for selection of the preferred alternative in the FMP addendum. After re-examination of the data, new analyses show that an equivalent reduction in discards can be achieved by closing a smaller area. Through this FMP, NMFS closes a 1° x 6° block (21,600 square nautical miles), from 39° to 40° N. and from 68° to 74° W., for

the month of June, to pelagic longline gear. The modification of the closed area should mitigate some of the safety concerns. This smaller area also responds to concerns raised by pelagic longline fishermen during the comment period about the safety of small vessels crossing the Gulf Stream. NMFS does plan to continue to analyze the impacts of this revised time/area closure and the investigate the potential benefits of other measures. NMFS analyses continue to indicate that there is no relationship between target catch and bluefin tuna interaction by pelagic longline gear. NMFS will add any additions to the U.S. landings quota, resulting from unused discard allowance, to the total U.S. quota. NMFS allows fishermen to use fishing gear while a longline is on board provided the longline gear is secured.

Comment 2: NMFS received numerous comments concerning the use of time/area closures for the pelagic longline fishery. A range of comments supported the proposed Florida Straits closure, other nursery areas such as Charleston Hump and areas in the Gulf of Mexico, rotating time/area closures, and a year round ban on longlining. Comments also opposed any time/area closure indicating that results from time/area closures are unpredictable due to redistributed effort. Specific to the proposed area, NMFS received many comments, including those of pelagic longline fishermen, that indicated that the proposed area is too small to have the desired conservation effect because fishermen will redistribute effort on the fringe of that closed area. The proposed closure is discriminatory because it only targets vessels in a particular area.

Response: In response to comments indicating the ineffectiveness of the Florida Straits closure, as well as updated analyses, NMFS defers the implementation of a time/area closure for protection of small swordfish until a later date. NMFS is committed to the use of large time/area closures to reduce bycatch of undersized swordfish and minimize the redistribution of fishing effort. Areas being analyzed include areas between Charleston Bump south to Key West and areas in the Gulf of Mexico. NMFS has scheduled an advisory panel meeting on June 10 and 11, 1999, to discuss new analyses related to larger closed areas than that proposed in the draft FMP. NMFS is aware of the social and economic impacts a closure may have on fishing communities and will consider those impacts when developing a larger closure area. AP members and the public will have an opportunity to comment on the alternatives before NMFS publishes a proposed rule, by Summer 1999. NMFS agrees that rotating time/area closures could reduce bycatch mortality of undersized swordfish if NMFS could identify concentrations of undersized swordfish or bycatch finfish in real time. However, NMFS does not have the resources to conduct such surveys.

Comment 3: NMFS should adopt a regulation that will allow the agency to implement large EEZ closures when the bycatch of marlin exceeds 25 percent of the directed catch. Once established, these closures should remain in place for five years.

Response: NMFS disagrees. Setting a goal like 25 percent of the catch is an arbitrary action, as is setting a five year closure. NMFS does not think implementing large closure areas with the sole objective of reducing billfish bycatch is practicable because of the minimal effect on billfish and the significant social and economic impacts on pelagic longline fishermen and their communities. However, NMFS will complete analyses to identify large areas to protect small swordfish and will consider the impacts of these closures on billfish stocks.

Comment 4: Implementation of a time/area closure requires 100 percent VMS coverage or 100 percent observer coverage.

Response: NMFS agrees that VMS and 100 percent observer coverage are useful ways to enforce time/area closures. NMFS requires all pelagic longline vessels to report using a vessel monitoring system, which is expected to reduce administrative costs of enforcing a time/area closure in comparison to observer coverage.

Comment 5: NMFS should include all gears in a time/area closure and require VMS on all vessels. Having closures to all fishing gears is contrary to the objectives of a time/area closure. The basis for establishing a time area closure is to reduce bycatch mortality. The development of fair regulations does not imply the same regulations for all fishing sectors.

Response: Regarding time/area closures and VMS, NMFS agrees that regulations do not have to be the same across all fishing sectors in order to be fair. NMFS, however, would implement no fishing zones if both the commercial and recreational fishing sectors had similar bycatch mortality impacts on a stock. That is not the case with bycatch mortality of bluefin tuna or swordfish.

Comment 6: NMFS has failed to provide detail on the viability of establishing other closed areas to protect juvenile swordfish.

Response: NMFS is continuing to conduct analyses on closure areas to protect small swordfish and will provide the necessary information on potential closed areas in the future.

Comment 7: NMFS received many comments, supporting or opposing the use of VMS in the pelagic longline fishery. Some commented that VMS presents a duplicate information collection (parallel to logbook data collection). Others commented that NMFS should provide the VMS to vessel owners because most operations do not have the finances for initial purchase of the units (VMS is economically devastating) and NMFS should pay for future upgrades to the VMS.

Response: VMS is crucial to enforcing time/area closures and NMFS requires VMS for all pelagic longline vessels in this final rule because it provides near real-time and very accurate position reports which. This accuracy and timeliness of the information collection are not duplicative to the logbook program because current data in logbooks are not submitted immediately to NMFS. Other benefits of VMS, in addition to enforcement of closed areas, include safety, communication with shoreside contacts, increased access to weather data for fishermen, and the future potential for real-time catch and bycatch reporting from captains and observers. In an effort to minimize costs to fishermen, NMFS has relaxed proposed specifications in order to approve a lower cost unit. NMFS will not be providing VMS hardware or funding communications costs for fishermen in the pelagic longline fishery. NMFS will publish a *Federal Register* notice indicating approved VMS systems for the HMS pelagic longline fishery. Fishermen should work with VMS manufacturing and service companies to determine what other expenses they may accrue in the future. NMFS does not anticipate that any upgrades will be needed.

Comment 8: Neither the draft FMP nor the proposed rule identified the VMS requirement as being subject to Paperwork Reduction Act requirements.

Response: NMFS included the information collection burden information related to compliance with the proposed measure to require vessel monitoring systems in the proposed rule (64 FR 3154, January, 20, 1999). The draft FMP did not provide information collection burdens for proposed measures.

Comment 9: There is only one current certified VMS vendor, which means there is no cost-controlling mechanism to protect users from monopoly action by the vendor.

Response: NMFS disagrees. At the time the comment was submitted, there were no VMS units approved yet by NMFS for use in the pelagic longline fishery. INMARSAT-C had been required for a previous pilot program only. NMFS has since approved the ARGOS MAR-GE unit and communication service and two other VMS units that work off the INMARSAT-C system (Thrane and Thrane 3022-D unit and Trimble Galaxy Sentinel). NMFS has also approved three communication service providers. Fishermen should contact these companies to determine which unit best meets their needs. All units comply with NMFS' regulatory standards.

Comment 10: NMFS should close critical right whale habitat to pelagic longline and driftnet fisheries.

Response: NMFS has prohibited the pelagic driftnet fishery for swordfish. Longline fishermen do not currently fish and are not expected to fish in the proposed areas, therefore the only value to this closure would be to prevent expansion of effort into these areas which is unlikely. Parts of these areas are in state waters. For these reasons, NMFS does not close critical right whale habitat to pelagic longline fishermen. If there are fishery interactions with right whales in the future, NMFS may consider closing these areas to HMS fishermen who interact with this species.

Permitting and Monitoring

Comment 1: NMFS should require a recreational HMS vessel permit.

Response: NMFS currently requires a permit for recreational tuna vessels, but not for sharks, swordfish or billfish. Recreational encounters with billfish and swordfish are generally rare, and landings are even less frequent, which makes scientifically-based sampling programs difficult to design and expensive to operate. While recreational vessel permits, such as those for Atlantic tunas, can be useful in determining the universe of potential participants, in the case of billfish and swordfish, encounters are so rare relative to effort expended, a specific permit may not be applicable to this type of fishery. Requiring fish to be tagged may be a more feasible alternative that could also help identify the universe, since anyone who might potentially land a billfish or swordfish would obtain a tag. Further research could shed light on the possibility of designing a viable mechanism can be implemented to identify specific user-groups. A recreational vessel permit, e.g., a permit for all HMS recreational fisheries, is included in the framework provisions for future consideration.

Comment 2: NMFS should require the use of a landing tag for recreational HMS fisheries.

Response: A pilot program implemented through state-federal cooperation has been in place for two years in North Carolina to test the use of tags for monitoring the recreational fishery for Atlantic bluefin tuna. A universal HMS recreational landing tag program would require further consideration of self-reporting systems, program design and logistics, as well as obtaining specific public comment on how best to implement an effective tag program. This monitoring tool is included as a framework provision because a landing tag system merits further consideration. The AP members noted that landings tags may assist in identification of the universe of Atlantic HMS anglers.

Comment 3: NMFS violates the Magnuson-Stevens Act by not making a reasonable effort to quantify the number of vessels, effort, catches, landings, bycatch, and/or trends of landings for the recreational or charter fishing sectors in HMS fisheries.

Response: The FMP provides all available information on the commercial and recreational HMS fisheries, including: estimates of the number of recreational vessels involved, the type and quantity of fishing gear used, the species of fish involved and their location, actual and potential revenues from the fishery. NMFS has quantified, to the extent practicable, the trends in landings of HMS by the recreational sector. In this FMP, NMFS establishes a number of measures that will improve estimates of recreational statistics, including mandatory permitting and logbook reporting for charter/headboats, observer coverage, and tournament reporting. Additional measures that can be utilized to further improve monitoring of the recreational, charter and commercial fishing sectors are included in the framework section of the draft FMP.

Comment 4: NMFS should eliminate mandatory permits and logbooks for charter vessels.

Response: NMFS disagrees. NMFS seeks to improve data collection in the recreational sectors of the HMS fisheries.

Comment 5: NMFS should eliminate the requirement for observers on charter vessels. This measure is impractical, violates the privacy of recreational anglers, will deter business, result in cancellation of trips, and will have a negative economic impact on the charter fleet and associated industries. NMFS should just place observers on the dock for inspections when vessels come back to shore. Monitoring of the charter fleet by NMFS is unnecessary, since anglers release most of the billfish that are caught. Any federal funds spent on observers should be used to expand monitoring of the commercial pelagic longline fleet.

Response: NMFS has eliminated the requirement for observers on charterboats and instead will implement a voluntary program. Observers on charter and headboats are a necessary component of fishery management to determine the accuracy of the data collected from logbooks, and will enable NMFS to directly observe recreational catch, hookup and release rates, the condition of released fish, and the species and size composition of the catch. This type of information cannot be obtained solely by dockside or telephone interviews. The final FMP establishes a voluntary observer program which will reduce negative economic impact. If statistically meaningful samples cannot be obtained, NMFS may reconsider a mandatory program in the future.

Comment 6: The HMS tournament reporting form, currently used by NMFS for billfish is difficult to report effort and other required information.

Response: NMFS has received numerous comments suggesting that the HMS tournament reporting form should be revised. NMFS may consider holding joint workshops with NMFS scientists, representatives of fishing organizations, and interested members of the public to discuss the best format for accurate reporting of necessary data.

Comment 7: Many charter-headboat vessels targeting HMS species already carry a permit and complete a logbook under programs for other fisheries.

Response: NMFS is requiring that all HMS charter/headboat owners that fish for HMS obtain an HMS permit, in order for NMFS to identify the universe of charter/headboats targeting HMS. However, NMFS does not intend to duplicate any reporting requirements and will

therefore allow charter/headboat owners to submit logbooks to NMFS as they have in the past, consistent with other charter permit conditions. NMFS will send logbook forms to Charter/headboat owners who do not currently submit logbooks.

Comment 8: NMFS should increase observer coverage of the longline fishery; U.S. has failed to comply with ICCAT recommendations for minimum observer coverage.

Response: NMFS continues to strive for a goal of 5 percent observer coverage in the pelagic longline fishery, under a stratified sampling scheme. This level of coverage is required under the ICCAT recommendation for yellowfin and bigeye tunas, and under the NMFS Biological Opinion to monitor takes of endangered species.

Comment 9: It is unrealistic to require vessel operators to complete the pelagic longline logbook within 24 hours of making a set. Longline logbook requirements are far ahead of any other group and further measures are punitive.

Response: NMFS has received comments indicating that there are practicality and safety issues associated with this proposed requirement, which was suggested for improved enforceability and accuracy. The operators indicate that they complete their own captain's books shortly following each set, and use these data when completing their logbooks. NMFS has modified the final action to require that logbooks be completed within 48 hours of hauling a set and before offloading the fish. NMFS finds logbook data very useful and the ability to inspect up-to-date logbooks is a necessary action for enforcement agents.

Comment 10: NMFS should not increase the number of reporting requirements unless NMFS can analyze all the information that is collected.

Response: NMFS increases reporting requirements in order to collect more accurate data on all sectors of HMS fisheries that supports rebuilding programs.

Comment 11: The LPS is not adequate to monitor catch of HMS species.

Response: NMFS disagrees. The LPS is a statistical survey designed to estimate catches of bluefin tuna, which is used both for inseason monitoring as well as year-end estimates of catch. Although it was designed for bluefin, the LPS collects information on other HMS at certain times and in certain areas. The MRFSS is a separate statistical survey designed to provide regional and state-wide estimates of recreational catch for the entire spectrum of marine fish species. Though not designed to account for the unique characteristics of HMS fisheries, the MRFSS does collect information on these species. In 1997, NMFS instituted a mandatory Automated Catch Reporting System (ACRS) to supplement monitoring of the recreational bluefin tuna fishery. The LPS is conducted simultaneously in order to provide a measure of comparison for the reported catch estimates. All recreational vessels are required to participate in both the call-in reporting and survey programs.

NMFS is also committed to working with the states to develop more effective partnerships for monitoring the recreational bluefin tuna fishery. As part of a pilot program launched in 1998, over 20 reporting stations have been established in North Carolina, and vessels landing recreationally caught bluefin are required to fill out a catch reporting card for each bluefin retained. This program, coordinated by NMFS in cooperation with the North Carolina Division of Marine Fisheries, was continued in 1999. Other mid-Atlantic states, including Maryland and New Jersey, have demonstrated an interest in establishing similar programs. NMFS maintains that

a successful tagging program depends upon effective state-federal coordination that takes into account regional differences in the fishery, as well as cooperation with the recreational industry.

NMFS maintains the current system of recreational catch monitoring for HMS, including the LPS, MRFSS, ACRS, and cooperative state tagging programs, combined with the measures implemented in this FMP and the Amendment to the Billfish FMP (charterboat logbooks, mandatory tournament registrations and reporting), are sufficient to monitor recreational catch of HMS. NMFS is committed to improving catch monitoring in both the recreational and commercial fisheries for HMS, and will work with fishery participants, the APs, the Councils, the States, and other interest parties toward this goal.

Safety of Human Life at Sea

Comment 1: A geographically narrow closure area, such as the proposed Florida Straits closure, may entice small vessels to over-extend their range to fish along the fringes of the closed area, in order to avoid incurring costs of re-locating their home ports. Time/area closures, in general, add a safety risk as fishermen may travel farther from shore in order to fish.

Response: NMFS recognizes the safety implications of time/area closures and will seek to minimize these risks to the extent practicable. However, NMFS reminds all vessel operators to maintain caution when undertaking all fishing activities. NMFS is implementing a VMS requirement, which may mitigate some of the safety risk. Further, NMFS is not finalizing the proposal to close the Florida Straits, but will continue analyzing closure boundaries to develop effective measures and to discourage re-distribution of effort around the fringes of the closed area.

Comment 2: NMFS needs to work with the National Weather Service to increase the number of nearshore and offshore weather reporting buoys to support more accurate weather forecasting for fishermen.

Response: NMFS will forward this comment to the National Weather Service.

Comment 3: Restrictive ICCAT quotas encourage unsafe derby fishing conditions; individual transferable quotas (ITQs) may be a practical solution for some HMS fisheries.

Response: Under the authority of the Magnuson-Stevens Act, NMFS may not implement ITQs until October 1, 2000. NMFS may consider ITQs for HMS fisheries after that time.

Comment 4: Filling out logbooks within 24 hours of hauling a set may be dangerous because it takes away from the time fishermen would normally be getting rest or making repairs to equipment.

Response: NMFS is concerned about safety at sea and therefore changes the logbook requirement to filling out logbooks within 48 hours of hauling a set or before offloading the fish.

Essential Fish Habitat

Comment 1: It is good that NMFS realizes more research needs to be done regarding Essential Fish Habitat (EFH). NMFS should avoid the temptation of rushing toward assumptions prior to the availability of scientific information throughout the entire range of Atlantic HMS.

Response: NMFS agrees. The EFH portions of the FMP are based on an assessment of the

currently available information from published and unpublished fishery-dependent and - independent data (including tag-recapture information), compilations of information from world management bodies, commercial and recreational fishermen, fishery observer data and knowledge of recognized species experts. The current descriptions and identifications of EFH for HMS meet the standards of the regulations. NMFS is committed to periodic review of the available information and will the EFH sections of the FMP when sufficient new information is available.

Comment 2: NMFS should expand the assessment of EFH to include an evaluation of impacts of EFH by fisheries other than those targeted by the HMS fishermen.

Response: NMFS agrees. At the time the FMP was prepared, spatial information on the distribution of various fisheries, HMS, other Federal or state fisheries was not accessible. This has been identified as a high priority project for NMFS to undertake.

Comment 3: NMFS should designate sargassum as EFH for HMS and stop the harvest of sargassum immediately until a complete and thorough study of the impact of removing this EFH is studied and reviewed.

Response: As a result of the input from the HMS advisory panel, sargassum has been identified in the FMP as an important biological component and an integral part of EFH for many of the HMS. Although many HMS frequently co-occur with sargassum, the degree to which sargassum is utilized by HMS and its exact role relative to HMS production has not been clearly documented in the scientific literature and is a matter of current research. Sargassum harvesting is currently being proposed for management (to be phased out) under the jurisdiction of the South Atlantic Fishery Management Council (SAFMC). The limitation of harvesting or possession by the SAFMC will restrict the removal of this component from HMS EFH.

Comment 4: NMFS should consider monitoring plankton and seaweed when planning on rebuilding HMS.

Response: NMFS agrees that an ecosystem approach is important when managing, and particularly when rebuilding, fisheries. Essential Fish Habitat regulations require that NMFS and the Councils take an ecosystem approach in identifying and conserving habitats that are considered essential to managed fisheries.

Comment 5: The FMP does not present a procedural framework for the process of review and mitigation of fishing and non-fishing threats to HMS EFH.

Response: In accordance with the EFH regulations, NMFS is establishing streamlined procedures to incorporate EFH concerns into existing environmental reviews. Consultations on actions that may adversely affect HMS EFH will be conducted at the regional level, as appropriate.

Comment 6: One comment offered specific changes to the broad descriptions of threats and conservation measures regarding oil and gas production based on a more narrow range of industry activities.

Response: The statements in the FMP regarding threats and conservation measures related to offshore oil and gas operations are meant to be broad and all-encompassing, and not site specific. Through the consultation process established under the Essential Fish Habitat regulations, NMFS will consider the potential impacts on HMS EFH from proposed oil and gas activities, and any

mitigating (e.g., regulatory) measures already in place, as well as their adequacy in protecting and conserving HMS EFH, on a case-by-case basis.

Comment 7: The habitat section should be updated with more current information.

Response: Recent publications were used in preparing the habitat section. Also, an effort was made to use publications that covered broad geographic areas in a similar, or consistent, manner so that throughout the various regions the same parameters could be described and compared. The habitat sections will be updated as new material becomes available through the SAFE Report and framework revisions, and EFH amendments to the FMP will be prepared if the information warrants.

Regulatory Flexibility Analysis

Comment 1: The alternatives proposed in the draft FMP will have a disproportionate impact on pelagic longline fishermen and the analyses contained in the IRFA and the draft HMS FMP do not seriously consider the many options to economic devastation that the pelagic longline industry has presented in the HMS AP process and in other submissions in recent years. Both the Regulatory Flexibility Act and NS 8 require NMFS to work diligently to develop alternatives that could permit rebuilding while moderating the economic impact of such conservation measures.

Response: NMFS agrees that many of the final actions will have a significant economic impact on all HMS fishermen, including pelagic longline fishermen. However, NMFS disagrees that it has not seriously considered the many options presented in the HMS AP process or in other submissions. NMFS considered all of the alternatives presented, has considered additional alternatives, and has performed numerous analyses on logbook and observer data in an attempt to minimize economic impacts to the extent practicable on HMS fishermen, including the pelagic longline fishermen. Often times, these analyses indicated to NMFS a more effective method of obtaining a particular goal while still minimizing economic impacts to the extent practicable. In all cases, NMFS ensures that the public has a chance to participate in the final rulemaking process. NMFS believes that the final actions will achieve the rebuilding goals of the Magnuson-Stevens Act while also minimizing the economic impacts to the extent practicable.

Comment 2: It is not appropriate for NMFS to consider employment as a cost which lowers the net economic benefit.

Response: NMFS realizes that employment is considered a benefit for the employee, but this is not the definition of net economic benefit. Net economic benefit is the difference between the benefits and costs to the owner of a vessel. Thus, because the owner pays the wages of the employees, labor must be considered a cost to the owner.

Comment 3: The FMP fails to include an analysis of the cost of overfishing and depletion of the fishery resources.

Response: NMFS disagrees. Although a quantitative analysis of the cost of overfishing was not performed, NMFS provided numerous discussions and qualitative analyses of the costs of overfishing and depletion of the fishery resources. Throughout the FMP NMFS discusses the benefits to fishermen in the long-term as the stocks rebuild and how the costs of fishing will continue to increase and the benefit to the nation will continue to decrease if HMS stocks remain overfished. In addition, NMFS repeatedly states that in the long-term, the economic impacts

endured now will be less than the economic impacts endured if HMS fisheries continue to decline and become commercially extinct.

Comment 4: Pelagic longline fishing should be profitable because it is so diverse. However, the draft FMP concludes that the average annual payout to a vessel owner is only \$53,064. This small payout is due to years of cumulative impacts of evermore stringent fishery management measures, the impact of foreign competition, market gluts, and disparate levels of domestic versus international regulation of pelagic longline fishing. The management measures proposed in the draft FMP will put much of the pelagic longline fleet out of business.

Response: NMFS agrees that the cumulative impact of the final actions in this FMP may put many pelagic and bottom longline fishermen out of business. However, NMFS believes that the many final actions implemented in this FMP both rebuild overfished fish stocks and minimize the economic impacts to the extent practicable. In the long-term, the actions in the FMP will build sustainable stocks that are economically viable. At present, many of these stocks are not at economically viable levels. This is evident in the small profits currently available to the pelagic longline fleet.

Comment 5: Requiring pelagic longline vessels to purchase, operate, and maintain a vessel monitoring system (VMS) is unfair; the VMS requirement will be economically devastating; the fixed costs of a VMS system fall disproportionately on smaller vessels; NMFS should not force the entire longline fleet to pay for VMS when only 20 vessels fished in the Straits of Florida proposed closure.

Response: Although the initial cost of a vessel monitoring system could be expensive (\$1,800 to \$5,000), NMFS feels the benefits obtained from such a system justify the costs. Direct benefits to fishermen include: the ability to delay offloading during a closure thus obtaining a better price and allowing pelagic longline fishermen to travel to and from the south Atlantic through the north Atlantic after the closure; the ability to travel across a closed area; additional safety to vessel operators by enabling the Coast Guard to accurately find a vessel in case of an emergency; and in the future, a vessel monitoring system may allow fishermen to transmit electronic logbooks thus decreasing the time taken to fill out the current logbooks and improving fleet-wide monitoring and predictions of closures. A vessel monitoring system also allows for effective enforcement of time/area closures, thus helping to rebuild the stock. This FMP only implements one time/area closure, however NMFS believes time/area closures are an effective method of reducing bycatch and can contribute to rebuilding. NMFS intends to implement additional time/area closures in the future. VMS will be important in enforcing these time/area closures.

Comment 6: The proposed Florida Straits closure will disproportionately impact the smallest and most economically vulnerable vessels in the fleet. The narrow targeting of the devastating economic impact on a handful of fishermen and fishing communities on Florida's East Coast is illegal and discriminatory. The contribution to rebuilding via reduction of dead discards will not be as great as the economic impacts on this small group of fishermen and will not be effective overall. A more productive approach would be to close larger areas for a shorter period of time. Such an approach would limit, if not preclude, the potential for redistribution of effort, while spreading the economic cost of rebuilding across a broader cross-section of the pelagic longline fleet.

Response: NMFS agrees that the proposed Florida Straits time/area closure may not be as effective as a larger time/area closure. However, NMFS does not agree that the proposed time/area closure discriminated against a handful of fishermen. The proposed time/area closure was designed to reduce the bycatch and rebuild the swordfish stocks, as required by the Magnuson-Stevens Act. NMFS did not propose a larger area in an attempt to mitigate the potential negative economic impacts of time/area closures on pelagic longline fishermen. However, the majority of commenters felt that while a time/area closure is necessary, the one proposed would not be effective. Thus, in this FMP NMFS is not implementing the proposed Florida Straits time/area closure. Instead, NMFS will re-examine all the data presented both before and during the comment period and re-analyze the data. A more effective, and probably larger, time/area closure will be proposed shortly after the implementation of this FMP.

Comment 7: If NMFS decides to impose such strict regulations on pelagic longline fishermen, NMFS should develop a buyback program; the possibility of a buyback should not be linked to other conservation methods.

Response: NMFS agrees that a buyback program might offset some of the economic hardships felt by HMS fishermen. Under Section 312 (b) of the Magnuson-Stevens Act, NMFS may implement a fishing capacity reduction program, such as a vessel or permit buyback, only once the entrance to a fishery has been limited. NMFS may consider a buyback program for commercial fishermen in the shark, swordfish, and tuna longline fisheries once limited access is implemented and funding is available.

Comment 8: NMFS' threshold of 50 percent reduction in gross revenues for a vessel to cease fishing operations lacks validity for the pelagic longline fishery. This fishery has already been economically decimated by successive rounds of regulations. A 20-percent reduction would be a more valid threshold.

Response: NMFS disagrees that the 50-percent reduction lacks validity. Based on information received during past comment periods, NMFS has determined that many fishermen remain in the fishery long after their gross revenues have been reduced by over 50 percent. While some fishermen may cease operations after 20 percent, information presented to NMFS does not support this threshold for ceasing fishing operations for the majority of participants.

Comment 9: The average annual earnings in the IRFA are overestimates. The actual economic situation is worse than NMFS is describing.

Response: As discussed in the IRFA, NMFS realizes the need for additional economic data for all HMS fishermen. NMFS has used the best available information and intends to work with the AP to develop a mandatory submission of economic information. There is nothing to preclude any small business from providing voluntarily and on its own initiative any cost data to NMFS for consideration in preparing an IRFA or FRFA. However, no such data have been forthcoming during the entire process of FMP development.

Comment 10: The fact that the draft FMP's preferred alternatives will most likely compel most of the pelagic longline fleet to cease operations vitiates the Agency's rosy long-term prognosis that domestic pelagic longline fishing income should increase once rebuilding, as the agency defines it, is well underway. Simply put, the vessels will not be around to fish, nor can the shoreside infrastructure in pelagic longline dependent communities survive these fishing

restrictions.

Response: NMFS agrees that the final actions will have significant impacts on HMS fishermen and that many fishermen may cease to fish. However, current fishing mortality levels are not sustainable. If NMFS does not impose restrictions now, there may not be any fishery in the future. In addition, the Magnuson-Stevens Act requires NMFS to rebuilding overfished fish stocks to optimum yield and places a time limit for this rebuilding. This FMP will allow NMFS to rebuild HMS stocks.

Comment 11: NMFS does not adequately consider cumulative impacts of its management measures.

Response: NMFS disagrees. The Regulatory Flexibility Act requires that NMFS consider both the cumulative and specific impacts of management measures on fishermen. The initial regulatory flexibility analysis (IRFA) contained in the draft HMS FMP explains how NMFS considered the impacts, cumulative and specific, of the proposed management measures. The IRFA found that cumulatively, the management measures would have a significant economic impact. The cumulative impact of the final actions will also have a significant economic impact.

General

Comment 1: Quota management is inappropriate for a recreational fishery. I do not support a recreational closure of any fishery.

Response: Bluefin tuna and blue and white marlin are subject to quotas or caps due to international management recommendation, including limits on the total amount harvested by recreational anglers. In addition, domestic regulations prohibit retention of certain species by all user groups, including a subset of shark species and spearfish, because these species are either particularly vulnerable or little is known about their status. In the final HMS FMP and Billfish FMP amendment, NMFS attempted to implement measures that would increase flexibility and allow continued participation in the recreational fishery despite the caps or quotas. For example, the billfish FMP amendment manages the recreational fishery primarily through the use of minimum sizes, rather than recreational retention limits or seasonal closures.

Comment 2: Our coastal and offshore resources need more protection from foreign fishing fleets; NMFS is disadvantaging U.S. fishermen; NMFS should not implement all these domestic measures because foreign fleets will catch the fish instead.

Response: There is no foreign fishing for HMS within the U.S. EEZ, although there is limited and strictly monitored foreign fishing on HMS prey species. Atlantic-wide, NMFS works through the ICCAT process as well as bilateral efforts (Canada, Mexico) to address issues of common concern in the management of HMS.

Comment 3: NMFS has to implement the strongest possible domestic measures for protecting these fine species [HMS] as a safeguard against inaction at the international level.

Response: NMFS agrees that strong domestic measures must be taken to rebuild and maintain HMS species. However, for most HMS, international cooperation is essential to a successful management program. The final HMS FMP and billfish FMP amendment provide a foundation for negotiation at ICCAT of an international rebuilding program for overfished HMS.

Comment 4: These regulations propose to impose a host of restrictions and controls on recreational fishing that are unnecessary and burdensome, and do little or nothing to accomplish the basic goal of rebuilding HMS, including billfish fisheries that are overfished or approaching being overfished.

Response: NMFS disagrees. Rebuilding HMS requires improved monitoring and accounting for all sources of mortality, including recreational fisheries. In addition, NMFS is required under Magnuson-Stevens and ATCA to provide comparable monitoring of all fisheries. The final HMS FMP and billfish FMP Amendment provide for new measures that will enhance monitoring and knowledge of all HMS fisheries, including recreational fishing, and that implement controls on recreational catches under international agreement, such as the limit on school bluefin tuna and on marlin landings. Nevertheless, the final FMP and amendment reflect public comment on recreational restrictions, as some measures have been reduced and/or made voluntary in nature, such as participation in workshops and in observer programs.

Comment 5: Considering the potential impacts of a landings closure on recreational billfish communities, the weight description of the ICCAT requirement should be changed to a headcount description, and the landing reduction described in terms of a minimum size increase.

Response: NMFS agrees. The billfish FMP amendment expresses the landings caps in terms of an approximate headcount, based on average sizes. In addition, the limits on landings are controlled primarily through a minimum size-based strategy, rather than adjustable recreational retention limits.

Comment 6: The regulations should specify that U.S. citizens, while fishing on foreign vessels in foreign waters, may comply with the regulations for that foreign venue, even if they are less restrictive than U.S. regulations, and must comply if they are more restrictive.

Response: National Standard 3 requires “To the extent practicable, an individual stock of fish shall be managed as a unit throughout its range, and interrelated stocks of fish shall be managed as a unit or in close coordination.” Previous Atlantic billfish regulations, implemented solely under the authority of the Magnuson Act, restricted fishing-related activities (possession and retention, size limits, gear limitations and incidental catch restrictions) within the jurisdictional limits of the U.S. EEZ. U.S.-flagged commercial and recreational vessels operating exclusively outside the U.S. EEZ were not affected by these restrictions, although the sale, purchase or barter of Atlantic billfish harvested from the management unit (i.e., for blue and white marlin, the Atlantic Ocean north of 5°N latitude) was prohibited. However, implementation of Atlantic billfish regulations under both the Magnuson-Stevens Act and ATCA will make these regulations applicable to all U.S. citizens and U.S.-flagged commercial and recreational vessels, regardless where fishing. NMFS disagrees that such application of the Atlantic billfish regulations is unfair and too restrictive on U.S. fishermen. NMFS feels that regulations will be much more effective if they are extended under the authority of ATCA to cover the operational area of U.S.-flagged vessels in the Atlantic Ocean, and the range of the impacted stock. The rebuilding of Atlantic billfish stocks requires reductions in mortality Atlantic-wide, necessitating management measures for Atlantic billfish be upheld throughout their range.

Comment 7: The language concerning management through international measures is incompatible with the language of the MSFCMA. It is clear that the United States is to promote Optimum yield, rather than become involved with the details of foreign management measures.

Response: NMFS supports the promotion of Optimum yield in all fisheries, including Optimum yield as part of a rebuilding plan for overfished species. For most HMS, international cooperation is essential to a successful management program. In addition to continued bilateral efforts, the final HMS FMP and billfish FMP amendment provide a foundation for negotiation at ICCAT of an international rebuilding program for overfished HMS.

Comment 8: There should be an interim final rule for the public to review and comment upon the final measures before the rule becomes effective.

Response: NMFS disagrees. There was an extensive comment period on the draft HMS FMP and draft billfish FMP amendment, the bluefin tuna addendum to the HMS FMP, as well as the proposed rule and supplement to the proposed rule. Nearly 5,000 comments were received, along with record attendance at the 27 public hearings, and AP meetings to address public comment. It is clear that the public was fully aware of and took advantage of the opportunity to comment on these proposals. The final HMS FMP and billfish FMP amendment clearly demonstrate that, where possible, NMFS has effected changes that meet the same objectives but with less impact on the affected communities. Finally, these documents provide a framework for the continued management of these species, and further delays will only hinder progress.

Comment 9: Framework provisions should be taken out of the FMP, as they are not understood by the public, and there is no oversight on the framework procedures used by NMFS.

Response: NMFS disagrees. The purpose of the framework process is to facilitate timely management of HMS. Measures proposed under the framework process will be subject to public comment and at least one public hearing, and if appropriate, an AP meeting as well. NMFS has clarified the objectives to which these framework provisions apply, and somewhat narrowed the range of framework measures.

Comment 10: Commercial interests are favored over good scientific management of the fish, and over interests of the long-standing recreational fishery.

Response: NMFS disagrees. The final measures in the HMS FMP and billfish amendment are based on the best scientific information available and include closure of the commercial fishery for sharks, swordfish and pelagic longlining of BAYS to all but those active in the fishery. The final shark measures include substantial reductions in commercial quotas and an expanded list of prohibited species. Bluefin tuna are subject to an international rebuilding program, and a foundation is established for negotiating a rebuilding program for swordfish, bigeye tuna, and billfish at future ICCAT meetings. Recreational measures have been honed to focus on those that are most effective while still meeting management goals.

Comment 11: When the quota for swordfish landings is met, no swordfish imports should be allowed into the United States.

Response: NMFS disagrees. Trade restrictive measures must be based on strong evidence that there are resource conservation benefits to such measures and must be consistent with international legal obligations. Note finally that NMFS has implemented a final rule prohibiting the import of Atlantic swordfish less than the ICCAT alternative minimum size, and requiring documentation of the source of all swordfish imports in an effort to better monitor international fishing levels.

Comment 12: The HMS FMP is extremely long and complicated covering many species. It would have been better to have separate hearings on each species rather than all HMS. Timing and location of public hearings need more input from public sector.

Response: The development of the HMS FMP has greatly benefitted from the holistic approach of combining swordfish, sharks, and tunas. Many of these species are harvested by the same commercial and recreational user groups, and an integrated FMP affords an improved management strategy for all species. The billfish FMP remains separate, however, due to the exclusively recreational nature of this fishery. Nevertheless, NMFS has and will continue to hold joint AP meetings on issues of common concern, and draw important parallels between management of the two species groups.

Comment 13: NMFS has not implemented programs to provide reliable, real time monitoring of recreational catch by private anglers as required by law.

Response: NMFS disagrees. The HMS FMP and billfish FMP amendment add to existing recreational data reporting requirements, including expanded permitting and logbook requirements, tournament registration and reporting, and an observer program. Recreational catch and harvest of HMS and billfish are also monitored by the Marine Recreational Fisheries Statistics Survey, the Large Pelagic Survey, and individual state recreational fisheries surveys. In addition, the framework measures in the FMP and amendment allow for expanded recreational monitoring. NMFS will continue to work with the APs and affected public to expand and develop these efforts to improve recreational monitoring.

Comment 14: The HMS FMP is biased against the recreational fishing industry and favors commercial fisheries. The HMS FMP does not address the destructive nature of long lime fishing. The FMP is overly burdensome for the collection of recreational fisheries data.

Response: NMFS strongly disagrees. The HMS FMP is focused on reducing fishing mortality for over fished species of sharks, tunas, and swordfish. The HMS FMP also address those resources that are currently considered to be fully fished. The final measures in the HMS FMP include closure of the commercial fishery for sharks, swordfish and pelagic longlining of BAYS to all but those active in the fishery. The final shark measures include substantial reductions in commercial quotas and an expanded list of prohibited species. Bluefin tuna are subject to an international rebuilding program, and a foundation is established for negotiating a rebuilding program for swordfish, bigeye tuna, and billfish at future ICCAT meetings. Recreational measures have been honed to focus on those that are most effective while still meeting management goals. Rebuilding HMS requires improved monitoring and accounting for all sources of mortality, including recreational fisheries. In addition, NMFS is required under Magnuson-Stevens and ATCA to provide comparable monitoring of all fisheries. The final HMS FMP and billfish FMP Amendment provide for new measures that will enhance monitoring and knowledge of all HMS fisheries, including commercial and recreational fishing, and that implement controls on recreational catches under international agreement, such as the limit on school bluefin tuna and on marlin landings. Nevertheless, the final FMP and amendment reflect public comment on recreational restrictions, as some measures have been reduced and/or made voluntary in nature, such as participation in workshops and in observer programs.

Comment 15: There is no need for registration of HMS tournaments as punitive and unnecessary. Without corresponding time and area closures of the longline fishing in spawning

and nursery areas, this regulation is unfairly biased against the recreational fishing industry.

Response: NMFS disagrees. NMFS is required under Magnuson-Stevens and ATCA to provide comparable monitoring of all fisheries. The final HMS FMP and billfish FMP Amendment provide for new measures that will enhance monitoring and knowledge of all HMS fisheries, including recreational fishing, and that implement controls on recreational catches under international agreement, such as the limit on school bluefin tuna and on marlin landings.

Comment 16: Do not use the 1980s resource status as a baseline for recovery as the fishery was severely depleted at that time due to the expansion of the near-shore longline fishery off Florida, which adversely affected juvenile and migrating fish.

Response: NMFS will continue to use the best available data in the assessments of the swordfish resource. The extent of the fishing mortality on juvenile and migrating swordfish off Florida in the 1980s relative to other areas is unknown. NMFS will continue to gather and assess historic information as it becomes available.

Comment 17: Recreational landing estimates for this and other pelagic species are generated from the MRFSS database and these estimates of landings are not accurate.

Response: NMFS disagrees. The MRFSS data program is designed to estimate recreational catch and effort over broad areas. While the program admittedly does not capture information on pulse fisheries or rare event fisheries, such as billfish and swordfish, the generated estimates and their proportional standard error estimates give an indication of their statistical validity. The Large Pelagic Survey (LPS) is designed to better capture catch and effort data on HMS species. Current plans will continue this survey and will consider expanding the program to additional geographic areas.

Comment 18: Except for billfish, no basis exists for how agency allocates catch among user groups.

Response: NMFS disagrees. NMFS bases all allocation of fishing privileges on National Standard 4, which requires all allocations, should they be necessary, to be fair and equitable to all such fishermen, be reasonably calculated to promote conservation, and carried out in such manner that no particular individual, corporation, or other entity acquire an excessive share of such privileges.

Comment 19: NMFS penalizes fishermen who provide data by using those data to place restrictions on the fishermen.

Response: NMFS disagrees. NS 1 calls for the prevention of overfishing and National Standard Two states that management measures will use the best scientific information available. Data are used to monitor the fishery to prevent overfishing and to support management measures to ensure the future health of the resource. If a fishery is judged to be overfished, all sources of information will be assessed to address the problem. Should fishermen not provide information, or provide inaccurate information, the management measures developed by NMFS to remedy the overfishing could be more burdensome than necessary on the fishing sectors depending on the fishery resource.

Comment 20: NMFS should adopt a more precautionary fishing mortality threshold that is less than F_{MSY} .

Response: NMFS agrees and has adopted $0.75F_{MSY}$, which is consistent with precautionary technical guidance for NS 1 established by NMFS scientists.